Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

INCOME TAX AND CORPORATION TAX CHARGE AND RATE BANDS

Income tax

23 Charge and rates for 2004-05

Income tax shall be charged for the year 2004-05, and for that year—

(a) the starting rate shall be 10%;

(b) the basic rate shall be 22%;

(c) the higher rate shall be 40%.

24 Personal allowances for those aged 65 or more

(1) For the year 2004-05—

(a) the amount specified in section 257(2) of the Taxes Act 1988 (claimant aged 65 or more) shall be £6,830; and

(b) the amount specified in section 257(3) of that Act (claimant aged 75 or more) shall be £6,950.

(2) Accordingly, section 257C(1) of that Act (indexation), so far as it relates to the amounts so specified, does not apply for that year.

Corporation tax

25 Charge and main rate for financial year 2005

Corporation tax shall be charged for the financial year 2005 at the rate of 30%.

26 Small companies' rate and fraction for financial year 2004

For the financial year 2004—

(a) the small companies' rate shall be 19%, and

(b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be 11/400ths.

27 Corporation tax starting rate and fraction for financial year 2004

For the financial year 2004—

(a) the corporation tax starting rate shall be 0%, and

(b) the fraction mentioned in section 13AA of the Taxes Act 1988 (marginal relief for small companies) shall be 19/400ths.

28 The non-corporate distribution rate

(1) In Part 1 of the Taxes Act 1988 (the charge to tax), after section 13AA (the starting rate of corporation tax) insert—

"**13AB The non-corporate distribution rate**

(1) This section applies where in any accounting period—

(a) a company makes (or is treated as making) one or more non-corporate distributions, and

(b) the company's underlying rate of corporation tax is less than the non-corporate distribution rate.

(2) The rate of tax to be applied in calculating the corporation tax chargeable on the company's basic profits for the accounting period is—

(a) in relation to so much of the company's basic profits as is matched with a non-corporate distribution, the non-corporate distribution rate, and

(b) in relation to the remainder of the company's basic profits, the company's underlying rate of corporation tax.

(3) The "non-corporate distribution rate" is such rate as Parliament may from time to time determine.

(4) Schedule A2 to this Act makes provision supplementing this section, in particular—

(a) defining "non-corporate distribution" and a company's "underlying rate of corporation tax",

(b) as to the matching of a company's profits and non-corporate distributions, and

(c) providing for non-corporate distributions to be allocated to other companies in certain circumstances.".

(2) After Schedule A1 to the Taxes Act 1988 insert as Schedule A2 the Schedule set out in Schedule 3 to this Act.

(3) In section 468(1A) of the Taxes Act 1988 (authorised unit trusts), for "and 13AA" substitute ", 13AA and 13AB".

(4) Section 13AB of and Schedule A2 to the Taxes Act 1988 have effect in relation to distributions made on or after 1st April 2004.

(5) For the purposes of applying the provisions of that section and Schedule to a distribution made in an accounting period beginning before 1st April 2004 and ending on or after that date—

(a) the parts of the accounting period falling in different financial years shall be treated as separate accounting periods, and

(b) the profits of the period shall be apportioned between the parts on a time basis according to their respective lengths unless it appears that that method would work unreasonably or unjustly in which case such other method shall be used as appears just and reasonable.

(6) The non-corporate distribution rate for the financial year 2004 is 19%.

Trusts

29 Special rates of tax applicable to trusts

(1) Section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) is amended as follows.

(2) In subsection (1A) (which sets certain rates of tax in relation to any year of assessment for which income tax is charged)—

(a) in paragraph (a) (which sets the Schedule F trust rate at 25 per cent) for "25 per cent" substitute "32.5 per cent", and

(b) in paragraph (b) (which sets the rate applicable to trusts at 34 per cent) for "34 per cent" substitute "40 per cent".

(3) The amendments made by subsection (2) have effect in relation to the year 2004-05 and subsequent years of assessment.

(4) Schedule 4 to this Act (which makes amendments relating to the rate applicable to trusts) shall have effect.

CHAPTER 2

CORPORATION TAX: GENERAL

Transfer pricing

30 Provision not at arm's length: transactions between UK taxpayers etc

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) In paragraph 5 (advantage in relation to United Kingdom taxation)—

(a) in sub-paragraph (1) omit "(but subject to sub-paragraph (2) below)";

(b) omit sub-paragraphs (2) to (6); and

(c) at the end of the paragraph insert—

"(7) In determining for the purposes of sub-paragraph (1) above the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a person who is not resident in the United Kingdom, there shall be left out of account any income of that person which is—

(a) excluded income for the purposes of section 128 of the Finance Act 1995 (limit on income chargeable on non-residents: income tax), or

(b) income to which section 151 of the Finance Act 2003 applies (non-resident companies: extent of charge to income tax).".

(3) Paragraph 6 (elimination of double counting) is amended as follows.

(4) For sub-paragraph (1) (application of paragraph) substitute—

"(1) This paragraph applies where—

(a) only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; and

(b) the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities.".

(5) In sub-paragraph (2) (application, on a claim, of arm's length provision to disadvantaged person)—

(a) in the opening words (subjection to paragraph 7 etc)—

(i) for "paragraph", where first occurring, substitute "paragraphs", and

(ii) after "7" insert "and 8";

(b) in paragraph (a) (computation on basis of arm's length provision), for "the disadvantaged person shall be entitled to have his profits and losses computed" substitute "the profits and losses of the disadvantaged person shall be computed".

(6) After paragraph 7 insert—

"Balancing payments between affected persons: no charge to, or relief from, tax

7A (1) This paragraph applies where—

(a) the circumstances are as described in paragraph 6(1) above,

(b) one or more payments (the "balancing payments") are made to the advantaged person by the disadvantaged person, and

(c) the sole or main reason for making those payments is that paragraph 1(2) above applies.

(2) To the extent that the balancing payments do not in the aggregate exceed the amount of the available compensating adjustment, those payments—

(a) shall not be taken into account in computing profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as distributions or charges on income.

(3) In this paragraph "the available compensating adjustment" means the difference between PL1 and PL2 where—

PL1 is the profits and losses of the disadvantaged person computed for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as they fall (or would fall) to be computed for tax purposes on a claim under paragraph 6 above,

for this purpose taking PL1 or PL2 as a positive amount if it is an amount of profits and as a negative amount if it is an amount of losses.".

(7) In paragraph 11 (special provision for companies carrying on ring fence trades) in sub-paragraph (3) (Schedule to have effect as if ring fence trade and other activities were carried on by separate persons etc)—

(a) at the end of paragraph (c) insert "and";

(b) omit paragraph (e) (Schedule to have effect as if paragraphs 5 to 7 were omitted).

(8) In paragraph 12 (appeals) in sub-paragraph (3)(b) for "each of whom is a person in relation to whom the condition set out in paragraph 5(3) above is satisfied" substitute "each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities".

(9) Schedule 5 to this Act (which makes amendments to other enactments in relation to transactions not at arm's length) has effect.

31 Exemptions for dormant companies and small and medium-sized enterprises

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) In paragraph 1 (basic rule on transfer pricing etc) in sub-paragraph (2) (profits and losses to be computed as if the arm's length provision had been made) after "Subject to paragraphs" insert "5A, 5B,".

(3) After paragraph 5 insert—

"Exemption for dormant companies

5A (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which satisfies the condition in sub-paragraph (2) below.

(2) The condition is that—

(a) the company was dormant throughout the pre-qualifying period, and

(b) apart from paragraph 1 above, the company has continued to be dormant at all times since the end of the pre-qualifying period.

(3) In sub-paragraph (2) above "the pre-qualifying period" means—

(a) if there is an accounting period of the company that ends on 31st March 2004, that accounting period, or

(b) if there is no such accounting period, the period of 3 months ending with that date.

(4) In this paragraph "dormant" has the same meaning as in section 249AA of the Companies Act 1985 (see subsections (4) to (7) of that section).".

(4) After paragraph 5A insert—

"Exemption for small or medium-sized enterprises

5B (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see paragraph 5D below).

(2) Exceptions to sub-paragraph (1) above are provided—

(a) in the case of a small enterprise, by sub-paragraphs (3) and (4) below, and

(b) in the case of a medium-sized enterprise, by sub-paragraphs (3) and (4) and paragraph 5C below.

(3) The first exception is where the small or medium-sized enterprise elects for sub-paragraph (1) above not to apply in relation to the chargeable period.

Any such election is irrevocable.

(4) The second exception is where, at the time when the actual provision is or was made or imposed,—

(a) the other affected person, or

(b) a party to a relevant transaction (see sub-paragraph (5) below),

is a resident (see sub-paragraph (6) below) of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).

(5) For the purposes of sub-paragraph (4) above, a "party to a relevant transaction" is a person who, in a case where the actual provision is or

was imposed by means of a series of transactions, is or was a party to one or more of those transactions.

(6) In this paragraph "resident", in relation to a territory,—

(a) means a person who, under the laws of that territory, is liable to tax there by reason of his domicile, residence or place of management, but

(b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

(7) The definitions of "qualifying territory" and "non-qualifying territory" are in paragraph 5E below.

Additional provisions for medium-sized enterprises

5C (1) Paragraph 5B(1) above does not apply as respects any provision made or imposed if—

(a) the potentially advantaged person in question is a medium-sized enterprise for the chargeable period in question, and

(b) the Board gives that person a notice under this sub-paragraph (a "transfer pricing notice") requiring him to compute the profits and losses of that chargeable period in accordance with paragraph 1(2) above in the case of that provision.

(2) A transfer pricing notice may be given in respect of —

(a) any provision specified, or of a description specified, in the notice, or

(b) every provision in relation to which the assumption in paragraph 1(2) above would fall to be made apart from paragraph 5B(1) above.

(3) A transfer pricing notice may be given only after a notice of enquiry has been given to the potentially advantaged person in respect of his tax return for the chargeable period.

(4) A transfer pricing notice must identify the officer of the Board to whom any notice of appeal under this paragraph is to be given.

(5) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the grounds that the condition in sub-paragraph (1)(a) above is not satisfied.

(6) Any such appeal must be brought by giving written notice of appeal to the officer of the Board identified for the purpose in the transfer pricing notice in accordance with sub-paragraph (4) above.

(7) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

(8) A person to whom a transfer pricing notice is given may amend his tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

(a) the day on which the notice is given, or

(b) if he appeals against the notice, the day on which the appeal is finally determined or abandoned.

(9) Where a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—

(a) the end of the period of 90 days specified in sub-paragraph (8) above, or

(b) the earlier amendment of the tax return for the purpose of complying with the notice.

(10) So far as relating to any provision made or imposed by or in relation to a person—

(a) who is a medium-sized enterprise for a chargeable period,

(b) who does not make an election under paragraph 5B(3) above for that period, and

(c) who is not excepted from paragraph 5B(1) above by virtue of paragraph 5B(4) above in relation to that provision for that period,

the tax return required to be made for that period is a return that disregards paragraph 1(2) above.

(11) Sub-paragraph (10) above does not prevent a tax return for a period becoming incorrect if, in the case of any provision made or imposed,—

(a) a transfer pricing notice is given which has effect in relation to that provision for that period,

(b) the return is not amended in accordance with sub-paragraph (8) above for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(12) In this paragraph—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998;

"tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return.

Meaning of "small enterprise" and "medium-sized enterprise"

5D (1) In this Schedule—

(a) "small enterprise" means a small enterprise as defined in the Annex to the Commission Recommendation,

(b) "medium-sized enterprise" means an enterprise which—

(i) falls within the category of micro, small and medium-sized enterprises as defined in that Annex, and

(ii) is not a small enterprise as defined in that Annex,

but for these purposes that Annex has effect with the modifications set out in sub-paragraphs (3) to (6) of this paragraph.

(2) In this paragraph—

"the Annex" means the Annex to the Commission Recommendation;

"the Commission Recommendation" means Commission Recommendation 2003/361/EC of 6th May 2003 (concerning the definition of micro, small and medium-sized enterprises).

(3) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) shall be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Schedule whether—

(a) that enterprise, or

(b) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise.

(4) Article 3 of the Annex shall have effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).

(5) The first sentence of Article 4(1) of the Annex shall have effect as if the data to apply to—

(a) the headcount of staff, and

(b) the financial amounts,

were the data relating to the chargeable period in paragraph 5B(1) above (instead of the period described in that sentence) and calculated on an annual basis.

(6) Article 4 of the Annex shall have effect with the omission of the following provisions—

(a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts);

(b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods);

(c) paragraph 3 (bona fide estimate in case of newly established enterprise).

Meaning of "qualifying territory" and "non-qualifying territory"

5E (1) In this Schedule—

"non-qualifying territory" means any territory which is not a qualifying territory;

"qualifying territory" means—

(a) the United Kingdom, or

(b) any territory as respects which Condition 1 or Condition 2 below is satisfied.

(2) Condition 1 is that—

(a) arrangements to which section 788 applies (double taxation relief by agreement with other territories) have been made in relation to the territory;

(b) those arrangements contain a non-discrimination provision (see sub-paragraphs (4) and (5) below); and

(c) the territory is not designated as a non-qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(3) Condition 2 is that—

(a) arrangements to which section 788 applies have been made in relation to the territory; and

(b) the territory is designated as a qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(4) For the purposes of this paragraph a "non-discrimination provision", in relation to any arrangement to which section 788 applies, is a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In this paragraph, "national", in relation to a contracting state, includes—

(a) any individual possessing the nationality or citizenship of the contracting state,

(b) any legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

(6) A statutory instrument containing regulations under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.".

(5) In paragraph 14(1) (general interpretation) insert each of the following definitions at the appropriate place—

""medium-sized enterprise" shall be construed in accordance with paragraph 5D above;";

""non-qualifying territory" has the meaning given by paragraph 5E above;";

""qualifying territory" has the meaning given by paragraph 5E above;";

""small enterprise" shall be construed in accordance with paragraph 5D above;".

32 Special applications of paragraph 6 of Schedule 28AA to the Taxes Act 1988

(1) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(2) After paragraph 6 insert—

"Application of paragraph 6 in relation to transfers of trading stock etc

6A (1) Paragraph 6(2)(a) above does not affect the credits to be brought into account by the disadvantaged person in respect of—

(a) closing trading stock, or

(b) closing work in progress in a trade,

for accounting periods ending on or after the last day of the relevant accounting period of the advantaged person.

(2) For the purposes of sub-paragraph (1) above, the relevant accounting period of the advantaged person is the accounting period in which the actual provision was made or imposed.

(3) For the purposes of this paragraph "trading stock", in relation to any trade, has the same meaning as it has for the purposes of section 100 (valuation of trading stock at discontinuance of trade) (see subsection (2) of that section).".

(3) After paragraph 6A insert—

"Compensating adjustment where advantaged person is a controlled foreign company

6B (1) This paragraph applies in any case where—

(a) the actual provision is provision made or imposed in relation to a controlled foreign company,

(b) in determining for the purposes of Chapter 4 of Part 17 the amount of that company's chargeable profits for an accounting period, its profits and losses fall to be computed in accordance with paragraph 1(2) above in the case of that provision,

(c) the whole of those chargeable profits fall to be apportioned under section 747(3) to one or more companies resident in the United Kingdom, and

(d) tax is chargeable by virtue of section 747(4) in respect of the whole of those chargeable profits, as so apportioned to those companies.

(2) Where this paragraph applies, paragraph 6 above shall have effect as if the controlled foreign company were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In the application of paragraph 6 above by virtue of this paragraph—

(a) references to the advantaged person in sub-paragraphs (4)(a) and (b), (5)(a) and (b) and (6)(b) of that paragraph include a reference to any of the companies mentioned in sub-paragraph (1)(c) above, and

(b) references to corporation tax include a reference to tax chargeable by virtue of section 747(4).

(4) In this paragraph—

"controlled foreign company" has the same meaning as in Chapter 4 of Part 17;

"accounting period", in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17.".

(4) In paragraph 13 (saving for provisions relating to capital allowances and capital gains) at the beginning insert "(1) Subject to sub-paragraph (2) below," and at the end add—

"(2) Nothing in sub-paragraph (1) above applies to paragraph 6 above.".

Penalties: temporary relaxation

33 Provision not at arm's length: temporary relaxation of liability to penalty

(1) This section has effect in relation to—

(a) the years of assessment 2004-05 and 2005-06, and

(b) accounting periods beginning on or after 1st January 2004 and ending on or before 31st March 2006,

and in the following provisions of this section "relevant period" means any of those years of assessment or accounting periods.

(2) In this section "records relating to an arm's length provision" means such records as might have been requisite for the purpose of making and delivering a correct and complete return, so far as relating to the determination of the provision asserted to be the arm's length provision for the purposes of Schedule 28AA to the Taxes Act 1988 in a case where that Schedule applies.

(3) In relation to any relevant period, the following provisions (which provide for penalties for failure to keep and preserve records for purposes of returns)—

(a) section 12B(5) of the Taxes Management Act 1970 (c. 9), and

(b) paragraph 23 of Schedule 18 to the Finance Act 1998 (c. 36),

do not apply if the records which the person in question fails to keep or preserve are records relating to an arm's length provision.

(4) In the application of subsection (2) in relation to paragraph 23 of Schedule 18 to the Finance Act 1998—

(a) for "requisite" substitute "needed", and

(b) for "making and delivering" substitute "delivering".

(5) Where a person delivers an incorrect return for any relevant period, he shall not be regarded as doing so negligently for the purposes of—

(a) section 95 of the Taxes Management Act 1970, or

(b) paragraph 20 of Schedule 18 to the Finance Act 1998,

by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

(6) For the purposes of section 95A of the Taxes Management Act 1970, where a partner delivers an incorrect partnership return for any relevant period—

(a) he shall not be regarded as doing so negligently, and

(b) his doing so shall not be regarded as attributable to negligent conduct on the part of any relevant partner,

by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

(7) For the purposes of section 99 of the Taxes Management Act 1970 (penalty for assisting in preparation of incorrect documents) a person shall not be taken to know that a return is incorrect by reason only of his failure, or the failure of any other person, to keep or preserve records relating to an arm's length provision.

Thin capitalisation

34 Payments of excessive interest etc

(1) In section 209 of the Taxes Act 1988 (meaning of "distribution") the following provisions shall cease to have effect—

(a) in subsection (2), paragraph (da) (interest etc in respect of securities where issuing company is 75% subsidiary of holder etc and the interest represents an amount that would not have been paid but for a special relationship etc); and

(b) subsections (8A) to (8F) (application of section 808A(2) to (4) for purposes of paragraph (da) of subsection (2)).

(2) Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) is amended as follows.

(3) After paragraph 1 insert—

"Provision in relation to securities: determination of arm's length provision

1A (1) This paragraph applies where—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies ("the issuing company").

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship (see sub-paragraph (6) below),

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

(3) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship (see sub-paragraphs (7) and (8) below).

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) In this paragraph "special relationship" means any relationship by virtue of which the condition in paragraph 1(1)(b) above is satisfied in the case of the affected persons.

(7) In this paragraph any reference to a guarantee includes a reference to a surety and to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company he will be paid by, or out of the assets of, one or more companies.

(8) For the purposes of this paragraph, the cases where one company has a "participatory relationship" with another are those where—

(a) one of them is directly or indirectly participating in the management, control or capital of the other; or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.

(9) In this paragraph "security" includes securities not creating or evidencing a charge on assets.

(10) For the purposes of this paragraph—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

shall be treated as if payable or given in respect of a security issued for the advance by the company, and references in this paragraph to a security shall be construed accordingly.

Guarantees etc

1B (1) This paragraph applies where the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security by a company which is one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by a company which is the other of those persons.

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the guarantee would have been provided at all in the absence of the special relationship,

(b) the amount that would have been guaranteed in the absence of the special relationship, and

(c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

(3) In a case where—

(a) a company provides a guarantee in respect of another company with which it has a special relationship, and

(b) it is not part of the first company's business to provide guarantees generally,

the fact that it is not part of the first company's business to provide guarantees generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (6) (meaning of special relationship);

(b) sub-paragraph (7) (construction of references to a guarantee);

(c) sub-paragraph (8) (meaning of participatory relationship);

(d) sub-paragraph (9) (meaning of security);

(e) sub-paragraph (10) (extended meaning of security).".

(4) In Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) paragraph 11A (exchange gains and losses where loan not on arm's length terms) is amended as follows—

(a) in sub-paragraph (1)(a) for "section 209(2)(da) or (e)(vii)" substitute "section 209(2)(e)(vii)";

(b) in sub-paragraph (1)(b), before "Schedule 28AA" insert "paragraph 1 of";

(c) omit sub-paragraph (2)(a);

(d) in sub-paragraph (2)(b), before "Schedule 28AA" insert "paragraph 1 of";

(e) omit sub-paragraph (3)(a);

(f) in sub-paragraph (3)(b), omit "in a case falling within paragraph (b) of that sub-paragraph,";

(g) in sub-paragraph (5)(b), omit "the terms would have been the same, except that".

35 Elimination of double counting etc

(1) Schedule 28AA to the Taxes Act 1988 is amended as follows.

(2) In paragraph 6 (elimination of double counting) in sub-paragraph (2) (right of disadvantaged person to claim relief, subject to sub-paragraphs (3) to (6) and paragraph 7) before "7" insert "6C, 6D,".

(3) After paragraph 6B (which is inserted by section 32) insert—

"Claims under paragraph 6 where paragraph 1A applies

6C (1) Where paragraph 1A above applies in relation to any provision, this paragraph has effect in relation to that provision.

(2) A claim under paragraph 6(2) above may be made in accordance with this paragraph.

For the purposes of this Schedule a "paragraph 6C claim" is a claim under paragraph 6(2) above made in accordance with this paragraph.

(3) A paragraph 6C claim may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such claim made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(4) A paragraph 6C claim may be made before or after a computation falling within paragraph 6(3)(a) above has been made.

(5) A paragraph 6C claim must be made either—

(a) at any time before the end of the period mentioned in paragraph 6(5)(a) above, or

(b) within the period mentioned in paragraph 6(5)(b) above,

but this is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making a claim).

(6) A paragraph 6C claim is not a claim within paragraph 57 or 58 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to the Management Act) has effect in relation to a paragraph 6C claim.

(7) Where—

(a) a paragraph 6C claim is made before a computation falling within paragraph 6(3)(a) above has been made,

(b) such a computation is subsequently made, and

(c) the claim is not consistent with the computation,

the affected persons shall be treated as if (instead of the claim actually made) a claim had been made that was consistent with the computation.

(8) All such adjustments shall be made (whether by discharge or repayment of tax, the making of assessments or otherwise) as are required to give effect to sub-paragraph (7) above.

(9) Sub-paragraph (8) above has effect notwithstanding any limit on the time within which any adjustment may be made.

(10) Where—

(a) a paragraph 6C claim is made,

(b) a return is subsequently made by the advantaged person on the basis mentioned in paragraph 6(3)(a) above, and

(c) a relevant notice (within the meaning of paragraph 6 above) taking account of such a determination as is mentioned in paragraph 6(4)(b) above is subsequently given to the advantaged person,

sub-paragraph (11) below applies.

(11) Where this sub-paragraph applies, any such amendment of the paragraph 6C claim as may be appropriate in consequence of the determination contained in the relevant notice may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such amendment made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(12) Any such amendment must be made within the period mentioned in paragraph 6(5)(b) above.

But that is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making amendment).

Compensating adjustment for guarantor company etc where paragraph 1B applies

6D (1) This paragraph applies in any case where—

(a) a company ("the issuing company") has liabilities under a security issued by the company,

(b) those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company"), and

(c) in computing the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security fall to be reduced (whether or not to nil) under paragraph 1(2) above by virtue of paragraph 1B above.

(2) On the making of a claim in any such case, the guarantor company shall, to the extent of that reduction, be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

(a) had issued the security,

(b) owed the liabilities under it, and

(c) had paid any interest or other amounts paid under it by the issuing company,

and in computing the profits and losses of the guarantor company for those purposes amounts shall be brought into account accordingly.

This sub-paragraph is subject to the following provisions of this paragraph.

(3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person) TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies by virtue of sub-paragraph (2) above, and

TR is the total amount of the reductions that fall within sub-paragraph (1)(c) above.

(4) In this paragraph "the loan provision" means the actual provision made or imposed between—

(a) the issuing company, and

(b) another company ("the lending company"),

which is provision in relation to the security.

(5) Where—

(a) the guarantor company makes a claim under sub-paragraph (2) above, and

(b) the lending company makes a claim under paragraph 6 above in respect of the loan provision,

sub-paragraphs (6) and (7) below apply.

(6) In determining, in a case where this sub-paragraph applies, the arm's length provision for the purposes of paragraph 6(2)(a) above in relation to the lending company's claim, additional amounts shall be brought into account as credits corresponding to the debits that fall to be brought into account by virtue of sub-paragraph (2) above in relation to the guarantor company.

(7) If, in a case where this sub-paragraph applies,—

(a) the lending company makes its claim under paragraph 6 above before the guarantor company makes its claim under sub-paragraph (2) above, and

(b) the computation on which the lending company's claim is based does not comply with sub-paragraph (6) above,

the guarantor company's claim shall be disallowed.

(8) A claim under sub-paragraph (2) above may be made by—

(a) the guarantor company,

(b) where there are two or more guarantor companies, those companies acting together, or

(c) the issuing company,

but any claim made by the issuing company shall be taken to be made on behalf of the guarantor company or companies.

(9) Sub-paragraphs (3) to (6) of paragraph 6 above (claims and time limits) shall apply in relation to a claim under sub-paragraph (2) above made by or on behalf of any person or persons as they apply in relation to a claim under that paragraph made by the disadvantaged person, but taking references in those sub-paragraphs—

(a) to the advantaged person, as references to the issuing company, and

(b) to the disadvantaged person, as references to the guarantor company or companies.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (7) (construction of references to a guarantee);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).

(11) In this paragraph "the Taxes Acts" has the meaning given in section 118(1) of the Management Act.".

(4) After paragraph 6D insert—

"Certain interest not to be regarded as chargeable under Case III of Schedule D

6E Where—

(a) interest is paid by any person under the actual provision,

(b) paragraph 1(2) above applies in relation to the actual provision,

(c) the amount of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision (or there would not have been any interest payable),

(d) the person receiving the interest makes a claim under paragraph 6 above or a paragraph 6C claim,

the interest paid under the actual provision, to the extent that it exceeds the amount of interest that would have been payable under the arm's length provision, shall not be regarded as chargeable under Case III of Schedule D.".

(5) In paragraph 14(1) (general interpretation) insert the following definition at the appropriate place—

""paragraph 6C claim" has the meaning given by paragraph 6C(2) above;".

36 Balancing payments and elections to pay tax instead

(1) Schedule 28AA to the Taxes Act 1988 is amended as follows.

(2) After paragraph 7A (which is inserted by section 30) insert—

"Securities: election to discharge tax liability instead of making balancing payments

7B (1) This paragraph applies in any case where—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above, and

(c) the actual provision is provision in relation to a security (the "relevant security").

(2) The disadvantaged person may make an election under this paragraph in respect of the relevant security if the condition in sub-paragraph (3) below is satisfied.

(3) The condition is that—

(a) the actual provision forms part of a capital market arrangement,

(b) the capital market arrangement involves the issue of a capital market investment,

(c) the securities that represent the capital market investment are issued wholly or mainly to independent persons (see sub-paragraph (9) below), and

(d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.

(4) An election under this paragraph in respect of the relevant security is an election for the disadvantaged person—

(a) to make no balancing payment within paragraph 7A above to the advantaged person in respect of the application of paragraph 1(2) above in relation to the relevant security in a chargeable period by virtue of paragraph 1A above, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from the application of paragraph 1(2) above in relation to the relevant security by virtue of paragraph 1A above.

(5) Where an election under this paragraph has effect in relation to an accounting period of the advantaged person, the tax mentioned in sub-paragraph (4)(b) above—

(a) shall be recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and

(b) shall not be recoverable from the advantaged person.

(6) Any election under this paragraph in respect of the relevant security—

(a) must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued,

(b) has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods, and

(c) is irrevocable.

For the purposes of this sub-paragraph a security issued in a chargeable period beginning before 1st April 2004 shall be treated as if it had been issued in the chargeable period beginning on that date.

(7) An election under this paragraph by a person is of no effect if the Board give that person a notice under this sub-paragraph refusing to accept the election.

(8) A notice under sub-paragraph (7) above may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.

(9) In this paragraph—

"capital market arrangement" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act);

"capital market investment" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act);

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;

"independent person" means a person—

(a) who is not the disadvantaged person, and

(b) who does not have a participatory relationship with either of the affected persons.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (8) (meaning of participatory relationship);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).".

(3) After paragraph 7B insert—

"Balancing payments by guarantor to issuer: no charge to, or relief from, tax

7C (1) This paragraph applies in any case where—

(a) the circumstances are as described in paragraph 6D(1) above,

(b) one or more payments (the "balancing payments") are made by the guarantor company to the issuing company, and

(c) the sole or main reasons for making those payments are that paragraph 1(2) above applies by virtue of paragraph 1B above or that paragraph 6D above applies.

(2) To the extent that the balancing payments made by all the guarantor companies do not in the aggregate exceed the amount TR in paragraph 6D(3) above (total reductions within paragraph 6D(1)(c) above), those payments—

(a) shall not be taken into account in computing for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and

(b) shall not for any purpose of the Corporation Tax Acts be regarded as distributions or charges on income.".

(4) After paragraph 7C insert—

"Guarantees: election to discharge tax liability instead of making balancing payments

7D (1) This paragraph applies where the following conditions are satisfied—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above,

(c) the actual provision falls within paragraph 1B(1) above.

(2) Sub-paragraphs (2) to (8) of paragraph 7B above apply in a case where this paragraph applies as they apply in a case where that paragraph applies, but with the modifications in sub-paragraphs (3) and (4) below.

(3) The relevant security is the security in paragraph 1B(1)(a) above.

(4) In sub-paragraph (4) (nature of the election)—

(a) for "paragraph 7A above" substitute "paragraph 7C below";

(b) for "paragraph 1A", in both places, substitute "paragraph 1B".".

Transfer pricing and thin capitalisation: commencement

37 Commencement and transitional provisions

(1) In this section "the amending provisions" means—

(a) sections 30 to 32 (transfer pricing);

(b) sections 34 to 36 (thin capitalisation);

(c) Schedule 5 (provision not at arm's length: related amendments).

(2) The amendments made by those provisions have effect in relation to chargeable periods beginning on or after 1st April 2004 (whenever the actual provision, within the meaning of Schedule 28AA to the Taxes Act 1988, is or was made or imposed).

(3) Where an accounting period of a company begins before, and ends on or after, 1st April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that accounting period ("the straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with 31st March 2004, and

(b) the second beginning with 1st April 2004 and ending with the straddling period,

and the company's profits and losses shall be computed accordingly for tax purposes.

(4) Where a period of account of any person within the charge to income tax begins before, and ends on or after, 6th April 2004, it shall be assumed for the purposes of the amending provisions, the amendments which they make and subsection (2) that that period ("the straddling period of account") consists of two separate periods of account—

(a) the first beginning with the straddling period of account and ending with 5th April 2004, and

(b) the second beginning with 6th April 2004 and ending with the straddling period of account,

and the person's profits and losses shall be computed accordingly for the purposes of income tax.

Expenses of companies with investment business and insurance companies

38 Expenses of management: companies with investment business

(1) For section 75 of the Taxes Act 1988 (expenses of management: investment companies) substitute—

"**75 Expenses of management: companies with investment business**

(1) In computing for the purposes of corporation tax the total profits for an accounting period of a company with investment business (see section 130) a deduction is to be allowed for any expenses of management of the company's investment business (see subsection (4) below) which are referable to that accounting period in accordance with section 75A.

That is subject to the following provisions of this section.

(2) A deduction is not to be allowed under subsection (1) above for any expenses to the extent that those expenses are deductible in computing profits apart from this section.

(3) Expenses of a capital nature are not expenses of management for the purposes of this section except to the extent that they fall to be treated as expenses of management for those purposes by virtue of—

(a) subsection (7) below (capital allowances), or

(b) any provision of the Tax Acts, other than this section.

(4) For the purposes of this section, expenses of management are "expenses of management of the company's investment business" to the extent that—

(a) the expenses are in respect of so much of the company's business as consists in the making of investments, and

(b) the investments concerned are not held by the company for an unallowable purpose during the accounting period (see subsection (5) below),

and references in this section to the company's investment business shall be construed accordingly.

(5) For the purposes of subsection (4)(b) above, investments are held by a company for an unallowable purpose during an accounting period to the extent that they are held during the period—

(a) for a purpose that is not a business or other commercial purpose of the company, or

(b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

(6) For the purposes of subsection (1) above, there shall be deducted from the amount that would, apart from this subsection, be deductible under that subsection the amount of any income derived from a source not charged to tax—

(a) which the company has in the course of carrying on its investment business, and

(b) which, in a case where the company is not resident in the United Kingdom,—

(i) the company has in the course of carrying on that business through a permanent establishment in the United Kingdom, and

(ii) is such property or rights as are mentioned in section 11(2A)(b),

but which is not franked investment income.

(7) For the purposes of this section, there shall be added to a company's expenses of management referable to any accounting period the amount of any allowances falling to be made to the company for that period by virtue of section 15(1)(g) of the Capital Allowances Act (plant and machinery allowances) so far as effect cannot be given to them under section 253(2) of that Act.

(8) Subsection (9) below applies in any case where, in an accounting period of a company with investment business, the sum of—

(a) the expenses of management deductible under subsection (1) above, and

(b) any charges on income paid in the accounting period, to the extent that they are paid for the purposes of so much of the company's business as consists in the making of investments,

exceeds the amount of the profits from which those expenses and charges are deductible.

(9) In any such case—

(a) the excess shall be carried forward to the succeeding accounting period; and

(b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section (including any further application of this subsection) as if it were expenses of management deductible for that accounting period.

(10) Any apportionment falling to be made for the purposes of this section shall be made on a just and reasonable basis.".

(2) Section 130 of the Taxes Act 1988 (meaning of "investment company" for purposes of Part 4) is amended as follows.

(3) After "In this Part of this Act" insert the following definition "—

> "company with investment business" means any company whose business consists wholly or partly in the making of investments;".

(4) The sidenote to the section accordingly becomes "Meaning of "company with investment business" and "investment company" in Part 4".

(5) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

39 Accounting period to which expenses of management are referable

(1) After section 75 of the Taxes Act 1988 (which is inserted by section 38) insert—

"**75A Accounting period to which expenses of management are referable**

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account,

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and

(c) the period of account coincides with an accounting period,

the expenses of management are referable to that accounting period.

(3) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account, and

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but

(c) the period of account does not coincide with an accounting period,

subsection (4) below applies.

(4) Where this subsection applies, the expenses of management—

(a) shall be apportioned between any accounting periods that fall within the period of account, and

(b) are referable to an accounting period to the extent that they are so apportioned to it.

(5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(6) Where—

(a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but

(b) accounts are drawn up by the company for a period of account, and

(c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,

the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.

(7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.

(8) Those assumptions are—

(a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and

(b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.

(9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.

(10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—

(a) in the company's profit and loss account, or

(b) in a statement of total recognised gains and losses or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose "debit" means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.".

(2) This section has effect in accordance with sections 42 and 43 (commencement and transitional provisions).

40 Expenses of insurance companies

(1) For section 76 of the Taxes Act 1988 (expenses of management of insurance companies) substitute—

"**76 Expenses of insurance companies**

(1) In computing for the purposes of corporation tax the profits for any accounting period of a company—

(a) which carries on life assurance business, and

(b) which is not charged to tax in respect of that business under Case I of Schedule D,

section 75 is not to apply in computing the profits of that business, but a deduction for expenses payable (the "expenses deduction") is to be allowed in accordance with the following provisions of this section.

See also subsection (14) below for the application of this section in relation to a company which carries on capital redemption business.

(2) The expenses deduction is to be made from so much of the income and gains of the accounting period referable to basic life assurance and general annuity business as remains after any deduction falling to be made by virtue of paragraph 4(2) of Schedule 11 to the Finance Act 1996 (non-trading deficits on loan relationships).

(3) For the purposes of this section "expenses payable" means expenses brought into account in line 12, 22 or 25 of Form 40 (the revenue account) in the periodical return of the company for a period of account, but does not include any of the amounts falling within subsection (4), (5) or (6) below.

(4) The amounts falling within this subsection are the following—

(a) reinsurance premiums,

(b) refunds of premiums,

(c) profit commissions and profit participations (however described),

(d) expenses or other amounts payable, to the extent that the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

For the purposes of paragraph (d) above, it is not one of the business or commercial purposes of a company to incur a liability to pay an amount of commission or other expenses which exceeds the amount which it could reasonably be expected to pay if the company were charged to tax under Case I of Schedule D in respect of its life assurance business.

(5) The amounts falling within this subsection are any amounts payable in connection with a policy or contract to—

(a) a policy holder or annuitant under the policy or contract (except where the policy holder is an insurance company),

(b) any other person who is entitled to receive benefits under the policy or contract,

(c) any person acting on behalf of a person falling within paragraph (a) or (b) above,

(d) the personal representatives of a deceased person who fell within paragraphs (a) to (c) above.

(6) The amounts falling within this subsection are expenses of a capital nature.

But this subsection does not apply in the case of an amount which, by virtue of any provision of the Tax Acts other than this section, falls to be treated for the purposes of this section as expenses payable which fall to be brought into account at Step 1 in subsection (7) below (the reference to Step 1 being express in the provision).

(7) The amount of the expenses deduction for an accounting period is found by taking the following steps—

Step 1

Find so much of the expenses payable as are—

(a) attributable to basic life assurance and general annuity business (see subsection (8) below), and

(b) referable to the accounting period (see subsection (9) below).

Step 2

Reduce each of the amounts found at Step 1 by excluding so much of the amount as is—

(a) deductible in computing income for the purposes of Schedule A,

(b) deductible by virtue of section 85(2B) of the Finance Act 1989, or

(c) deductible by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom.

Step 3

Find the amounts (so far as not included at Step 1) which fall to be treated for the purposes of this section as expenses payable for the accounting period by virtue of any of the following provisions—

section 432AB(3) (Schedule A loss or an overseas property business loss referable to basic life assurance and general annuity business);

section 437(1A) (relief for income element of new annuities);

section 587B(8)(b)(i) (relief for company carrying on life assurance business in relation to gifts of shares and securities);

paragraph 16(1) of Schedule 7 to the Finance Act 1991 (transitional relief for old annuities);

paragraph 4(4)(b) of Schedule 11 to the Finance Act 1996 (carried forward non-trading deficit on loan relationships produced by separate computation for basic life assurance and general annuity business);

section 256(2)(a) of the Capital Allowances Act (capital allowances on plant and machinery used in the management of life assurance business);

paragraph 23 of Schedule 22 to the Finance Act 2001 (150% relief in respect of the remediation expenditure on contaminated land owned by a company carrying on life assurance business and acquired to be a management asset);

paragraph 13(2) of Schedule 12 to the Finance Act 2002 (125% of relevant expenditure on R&D in the case of a life assurance company);

paragraph 23(2) of Schedule 13 to the Finance Act 2002 (150% of relevant expenditure on research into vaccines in the case of a life assurance company);

paragraph 36(3) of Schedule 29 to the Finance Act 2002 (relief for non-trading loss on intangible fixed assets).

Step 4

Give effect to the provisions specified in Step 3 by adding together—

(a) so much of the amounts found at Step 1 as remains after making any reductions at Step 2, and

(b) the amounts found at Step 3,

and then deduct the amount of any reversal (wherever brought into account) of an expense included at Step 1 in a previous period,

to give Subtotal 1.

Step 5

If the whole or any part of a loss arising to the company in respect of its life assurance business in the accounting period is set off under section 393A or 403(1)—

(a) find the amount ("amount L") that is equal to so much of the loss as, in the aggregate, is so set off,

(b) find the sum ("amount S") of the amounts by which any losses for that period under section 436 or 439B fall to be reduced under section 434A(2)(b),

(c) from amount L deduct amount S, to give the adjusted loss deduction,

then reduce Subtotal 1 by deducting from it the adjusted loss deduction,

to give Subtotal 2.

Step 6

Give effect to subsection (6) of section 86 of the Finance Act 1989 (spreading of acquisition expenses) by—

(a) finding the amount that is equal to six-sevenths of the adjusted amount of the acquisition expenses (within the meaning of that section) for the accounting period, and

(b) deducting that amount from Subtotal 2,

to give Subtotal 3.

Step 7

Add together the following amounts—

(a) Subtotal 3, and

(b) any amounts carried forward to the accounting period under subsection (12) or (13) below (unrelieved excesses from earlier accounting periods),

to give Subtotal 4.

Step 8

Give effect to subsections (8) and (9) of section 86 of the Finance Act 1989 (fraction of adjusted amount of acquisition expenses for earlier accounting periods) by adding together—

(a) Subtotal 4, and

(b) any amounts which are to be relieved under this section by virtue of those subsections,

to give the basic deduction.

Step 9

If—

(a) amount D1 (see subsection (10) below), exceeds

(b) amount R (see subsection (11) below),

deduct an amount equal to the excess from the basic deduction.

Step 10: the amount of the expenses deduction

The amount of the expenses deduction is so much of the basic deduction (see Step 8) as remains after making any deduction required at Step 9.

(8) For the purposes of Step 1, the expenses that are attributable to basic life assurance and general annuity business are the expenses which are attributable to that business in accordance with proper internal accounting practice.

In this subsection "proper internal accounting practice" means the practice of insurance companies in allocating all the expenses of the company to particular categories of business in accordance with any applicable requirements of—

(a) generally accepted accounting practice, or

(b) the Prudential Sourcebook (Insurers).

(9) The following rules have effect for determining for the purposes of Step 1 the expenses that are referable to an accounting period.

Rule A

Where a period of account coincides with an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period.

Rule B

Where—

(a) two or more accounting periods fall within the same period of account, and

(b) that period of account is longer than 12 months,

section 834(4) (apportionment on time basis) is to apply.

Rule C

In any other case where two or more accounting periods fall within the same period of account, the expenses referable to any of those accounting periods are the expenses that would have been referable to that accounting period if—

(a) the accounting period had coincided with a period of account, and

(b) a separate periodical return had been made for that period of account,

and section 834(4) (apportionment on time basis) is not to apply.

Rule D

Rules A to C are subject to any provision of the Corporation Tax Acts which provides for an amount to be treated as expenses payable for, or referable to, a particular period.

(10) The amount D1 in Step 9 is the amount that would be the profits of the company's life assurance business for the accounting period if—

(a) computed in accordance with the provisions applicable to Case I of Schedule D, and

(b) adjusted in respect of losses.

The adjustment in respect of losses is a deduction of the amount which, disregarding sections 434A(2) and 440B, would fall to be set off under section 393 against the company's income for that period if the company had

always been charged to tax under Case I of Schedule D in respect of its life assurance business.

(11) The amount R in Step 9 (which may be a negative amount) is found for the accounting period by—

(a) taking the company's relevant income, and

(b) deducting from it the relevant aggregate.

The "relevant income" is the sum of—

(a) the income and gains referable by virtue of section 432A to the company's basic life assurance and general annuity business;

(b) distributions received by the company from companies resident in the United Kingdom which are referable by virtue of section 432A to its basic life assurance and general annuity business;

(c) profits chargeable under Case VI of Schedule D under section 436, 439B or 441.

The "relevant aggregate" is the sum of—

(a) the basic deduction (see Step 8);

(b) any non-trading deficit on the company's loan relationships which is produced for the period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996;

(c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period.

(12) Where for any accounting period—

(a) the amount of the expenses deduction (see Step 10), exceeds

(b) the amount from which that deduction is to be made (see subsection (2) above),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(13) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where for any accounting period—

(a) the basic deduction (see Step 8), exceeds

(b) the expenses deduction (see Step 10),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(14) In this section any reference to—

(a) life assurance business, or

(b) basic life assurance and general annuity business,

includes a reference to capital redemption business.

(15) In this section—

"capital redemption business" means any capital redemption business, within the meaning of section 458, which is business to which that section applies;

"expenses payable" has the meaning given by subsection (3) above;

and other expressions have the same meaning as in Chapter 1 of Part 12.".

(2) This section has effect in accordance with sections 42 and 44 (commencement and transitional provisions).

41 Related amendments to other enactments

(1) The enactments mentioned in Schedule 6 to this Act shall have effect with the amendments specified in that Schedule.

(2) Subsection (1) has effect in accordance with sections 42, 43 and 44 (commencement and transitional provisions).

42 Commencement of sections 38 to 41

(1) The amendments made by sections 38 to 41 and Schedule 6 have effect for accounting periods beginning on or after 1st April 2004.

(2) This is subject to the transitional provisions in sections 43 and 44 and that Schedule.

43 Companies with investment business: transitional provisions

(1) Any amount which, apart from this subsection, would have fallen to be treated under the old section 75(3) as if it had been disbursed as expenses of management for the first new accounting period of a company shall instead be treated as if it were expenses of management deductible for that period by virtue of the new section 75(9).

(2) To the extent that any amount was deductible under subsection (1) of section 75 for an old accounting period, the amount shall not again be deductible under that subsection for a new accounting period.

(3) Subsection (2) is without prejudice to the old section 75(3) and the new section 75(9) (carry forward of unrelieved excess to later accounting period).

(4) To the extent that an amount—

(a) was not deductible under section 75(1) by an investment company for any old accounting period, but

(b) would have been deductible under the new section 75(1) for an old accounting period if the amendments made by sections 38 and 39 and Schedule 6 or any order under section 46 (so far as having effect in relation to the first new accounting period) had been in force in relation to that period,

the amount shall be deductible under section 75(1) for the first new accounting period of the company.

(5) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 ("the commencement date"), it shall be assumed, for the purpose of determining the amounts that are deductible for that period under section 75(1) of the Taxes Act 1988, that that accounting period (the "straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with the day preceding the commencement date, and

(b) the second beginning with the commencement date and ending with the straddling period,

but this is subject to subsection (6).

(6) In the case of an investment company, subsection (5) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 75(1) by virtue of—

(a) subsection (3) of the old section 75, or

(b) any provision of the Corporation Tax Acts, apart from section 75 and this section.

(7) Where, for the purposes of section 768B or 768C of the Taxes Act 1988, there is a change in the ownership of a company during the straddling period, then for the purposes of the section in question (and Schedule 28A to that Act), before making any such division as is required by section 768B(4) or 768C(3) of that Act,—

(a) the straddling period shall be divided into two parts in accordance with subsection (5), and

(b) those parts shall be treated in accordance with that subsection as two separate accounting periods, but

(c) subsection (6) shall be disregarded,

and section 768B or 768C of, and Schedule 28A to, the Taxes Act 1988 shall have effect accordingly.

(8) In this section—

"the commencement date" shall be construed in accordance with subsection (5);

"investment company" has the same meaning as in Part 4 of the Taxes Act 1988 (see section 130 of that Act);

"new accounting period" means an accounting period beginning on or after the commencement date;

"old accounting period" means an accounting period beginning before the commencement date;

"the new section 75" means section 75 as it has effect in relation to a new accounting period;

"the old section 75" means section 75 as it has effect (apart from subsection (5) above) in relation to an old accounting period;

"section 75" means section 75 of the Taxes Act 1988.

44 Insurance companies: transitional provisions

(1) Step 7 has effect for the first new accounting period as if, in paragraph (b) of that Step, the reference to amounts carried forward under subsection (12) or (13) of the new section 76 (carry forward of unrelieved excess to later accounting period) included—

(a) a reference to amounts falling to be carried forward from the last old accounting period under section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)), and

(b) a reference to so much of any pool under subsection (6) of section 87 of the Finance Act 1989 (c. 26) (pre-1990 expenses) as remains after making any reduction required by paragraph (c) of that subsection for the last old accounting period.

(2) To the extent that an amount—

(a) was not deductible under the old section 76(1) by a company for any old accounting period, but

(b) would have fallen to be taken into account by the company in determining the expenses deduction to be made under the new section 76(1) for an old accounting period if the amendments made by section 40 and Schedule 6 had been in force in relation to that period,

the company's basic deduction (see Step 8) for the first new accounting period shall be increased by the addition of that amount.

(3) Where there is an accounting period that begins before, and ends on or after, 1st April 2004 ("the commencement date"), it shall be assumed, for the purpose of determining the deduction to be made under section 76(1), that that accounting period ("the straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with the day preceding the commencement date ("the first notional period"), and

(b) the second beginning with the commencement date and ending with the straddling period ("the second notional period"),

and the deduction shall be determined in accordance with subsections (4) to (6).

(4) For the purpose of determining the deduction to be made under section 76(1) for the straddling period—

(a) first add together—

(i) such amounts falling within the old section 76(1) as were disbursed for the first notional period, but without deducting amounts falling within the old section 76(1)(aa), (a), (c), or (ca),

(ii) the amounts falling to be brought into account at Step 1, as reduced at Step 2, for the second notional period, and

(iii) amounts falling to be carried forward from the previous accounting period under the old section 75(3) by virtue of the old section 76(1) (including any amounts falling to be so carried forward by virtue of the old section 76(5)),

(b) then reduce the aggregate of those amounts (but not below nil), by deducting from that aggregate any amounts falling within the old section 76(1)(aa), (a), (c), or (ca) for the straddling period,

and that aggregate, as so reduced, is deductible in accordance with the old section 76(1)(e) but subject to the old section 76(2) to (2D).

(5) Subsection (3) does not have effect for the purpose of determining the amounts that are deductible for the straddling period under section 76(1) by virtue of any provision of the Corporation Tax Acts apart from—

(a) the old section 75(3),

(b) section 76, and

(c) this section,

(so that, in particular, the old section 86 has effect for the straddling period).

(6) No amount shall be brought into account in determining the deduction to be made under section 76(1) for the straddling period except as provided by subsections (4) and (5).

(7) Any reference in this section to a numbered Step is a reference to the Step so numbered in subsection (7) of the new section 76.

(8) In this section—

"the commencement date" shall be construed in accordance with subsection (3);

"new accounting period" means an accounting period beginning on or after the commencement date;

"old accounting period" means an accounting period beginning before the commencement date;

"the new section 76" means section 76 as it has effect in relation to a new accounting period;

"the old section 76" means section 76 as it has effect (apart from subsection (3) above) in relation to an old accounting period;

"section 75" means section 75 of the Taxes Act 1988;

"section 76" means section 76 of the Taxes Act 1988;

"the old section 86" means section 86 of the Finance Act 1989 (c. 26) as it has effect (apart from subsection (3) above) in relation to an old accounting period.

Amounts reversing expenses of management deducted

45 Amounts reversing expenses of management deducted: charge to tax

(1) After section 75A of the Taxes Act 1988 (inserted by section 39) insert—

"**75B Amounts reversing expenses of management deducted: charge to tax**

(1) This section applies in any case where the following conditions are satisfied—

(a) a credit is brought into account by a company in a period of account (the "reversal period") which ends on or after the commencement date,

(b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),

(c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company ("the period of deductibility"),

(d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),

(e) the period of deductibility ends before, or at the same time as, the reversal period,

(f) the reversal period does not coincide with an accounting period beginning before the commencement date.

(2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.

(3) In this section "the reversal amount" means so much of the credit as—

(a) reverses so much of the debit as represents the expenses of management, and

(b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.

For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.

(4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.

(5) If the reversal period does not coincide with an accounting period of the company—

(a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and

(b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.

(6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—

(a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company's expenses of management deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and

(b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.

(8) In subsection (1) above "brought into account", in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

(9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.

(10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.

(11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and

then in whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).

(12) In this section—

"the commencement date" means 1st April 2004;

"credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;

"debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.".

(2) Where any such previous period as is referred to in subsection (1)(d) of section 75B is an old accounting period, that section has effect so far as relating to that previous period as if the reference to section 75(9) were a reference to subsection (3) of the old section 75.

(3) In subsection (2), "old accounting period" and "the old section 75" have the same meaning as in section 43.

(4) In section 842 of the Taxes Act 1988 (investment trusts) after subsection (1AB) insert—

"(1AC) In determining the amount of a company's income for the purposes of subsection (1)(a) above, no account shall be taken of any amount that falls under section 75B(7)(b) to be regarded as income of the company chargeable under Case VI of Schedule D.".

Power to make consequential amendments

46 Power to make consequential amendments

(1) The Treasury may by order make such amendments, repeals or revocations in any enactment (including an enactment amended by this Act) as appear to them to be appropriate in consequence of sections 38 to 40 and 45 and Schedule 6.

(2) The power conferred by subsection (1) to make an order includes power—

(a) to make different provision for different cases, and

(b) to make incidental, consequential, supplemental or transitional provision and savings.

(3) Any order made under this section on or before 31st December 2004 may make provision having effect in relation to accounting periods ending before the date on which the order is made (but not before 1st April 2004).

(4) In this section—

"enactment" includes an enactment comprised in subordinate legislation;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21 of that Act).

Insurance companies: miscellaneous

47 Insurance companies etc.

Schedule 7 to this Act (which makes provision about insurance companies and companies which have ceased to be insurance companies after a transfer of business) shall have effect.

Loan relationships and derivative contracts

48 Loan relationships: miscellaneous amendments

Schedule 8 to this Act (which makes amendments relating to loan relationships) shall have effect.

49 Derivative contracts: miscellaneous amendments

Schedule 9 to this Act (which makes amendments relating to derivative contracts) shall have effect.

Accounting practice

50 Generally accepted accounting practice

(1) In the Tax Acts "generally accepted accounting practice" means—

(a) in relation to the affairs of a company or other entity that prepares accounts in accordance with international accounting standards ("IAS accounts"), generally accepted accounting practice with respect to such accounts;

(b) in any other case, UK generally accepted accounting practice.

(2) In the Tax Acts "international accounting standards" means the international accounting standards, within the meaning of Regulation (EC) No. 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation.

(3) Where the European Commission has not adopted a particular international accounting standard, then as regards the matters covered by that standard—

(a) generally accepted accounting practice with respect to IAS accounts shall be regarded as permitting the use either of the unadopted standard or of UK generally accepted accounting practice, and

(b) accounts prepared on either basis shall be regarded for the purposes of the Tax Acts as prepared in accordance with international accounting standards.

(4) In the Tax Acts "UK generally accepted accounting practice"—

(a) means generally accepted accounting practice with respect to accounts of UK companies (other than IAS accounts) that are intended to give a true and fair view, and

(b) has the same meaning in relation to—

(i) individuals,

(ii) entities other than companies, and

(iii) companies that are not UK companies,

as it has in relation to UK companies.

In this subsection "UK companies" means companies incorporated or formed under the law of a part of the United Kingdom.

(5) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts)—

(a) in the definition of "generally accepted accounting practice" for "has the meaning given by section 836A" substitute "has the meaning given by section 50(1) of the Finance Act 2004";

(b) at the appropriate place insert—

> ""international accounting standards" has the meaning given by section 50(2) of the Finance Act 2004;"; and
>
> ""UK generally accepted accounting practice" has the meaning given by section 50(4) of the Finance Act 2004;".

(6) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

51 Use of different accounting practices within a group of companies

(1) This section applies where—

(a) a company (company A) prepares accounts in accordance with international accounting standards,

(b) another company (company B) in the same group of companies prepares accounts in accordance with UK generally accepted accounting practice,

(c) there is a transaction between, or a series of transactions involving, company A and company B, and

(d) a tax advantage would (apart from this section) be obtained by either or both of those companies in relation to the transaction or series of transactions as a result of the use of different accounting practices.

(2) In that case the Tax Acts apply in relation to that transaction or series of transactions as if both companies prepared accounts in accordance with UK generally accepted accounting practice.

(3) The provisions of section 170(3) to (6) of the Taxation of Chargeable Gains Act 1992 (c. 12) apply to determine for the purposes of this section whether companies are in the same group of companies.

(4) A series of transactions is not prevented from being a series of transactions involving company A and company B by reason only of the fact that one or more of the following is the case—

(a) there is no transaction in the series to which both those companies are parties;

(b) that parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those companies;

(c) there are one or more transactions in the series to which neither of those companies is a party.

(5) In this section "tax advantage" has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (see section 709 of that Act).

(6) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

52 Amendment of enactments that operate by reference to accounting practice

(1) Schedule 10 makes amendments of provisions of the Tax Acts that operate by reference to accounting practice.

(2) In that Schedule—

Part 1 makes amendments relating to loan relationships;

Part 2 makes amendments relating to derivative contracts;

Part 3 makes amendments relating to intangible fixed assets;

Part 4 makes amendments relating to foreign currency accounting.

(3) The amendments have effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

53 Treatment of expenditure on research and development

(1) Expenditure by a company on research and development, if not of a capital nature, is not prevented from being regarded for tax purposes as deductible in computing profits by reason of the fact that for accounting purposes it is brought into account by the company in determining the value of an intangible asset.

(2) Subsection (1) applies, in particular, for the purposes of—

section 82A of the Taxes Act 1988 (deduction of expenditure on research and development),

Schedule 20 to the Finance Act 2000 (c. 17) (R&D tax relief),

Schedule 12 to the Finance Act 2002 (c. 23) (tax relief for expenditure on research and development), and

Schedule 13 to that Act (tax relief for expenditure on vaccine research etc.).

(3) Where expenditure is brought into account by a company for tax purposes in accordance with subsection (1), no deduction may be made in computing for tax purposes the profits of the company in respect of the writing down of so much of the value of an intangible asset as is attributable to that expenditure.

(4) Expenditure shall not be regarded by virtue of subsection (1) as deductible in computing a company's profits for an accounting period to the extent that—

(a) a deduction has been made in respect of it in computing the company's profits for a previous accounting period, or

(b) the company has benefited from a tax relief in respect of it for a previous accounting period under any of the provisions specified in subsection (2).

(5) In this section—

"intangible asset" has the meaning it has for accounting purposes; and

"research and development" has the meaning given by section 837A of the Taxes Act 1988.

(6) This section shall come into force in accordance with provision made by the Treasury by order made by statutory instrument.

54 Trading profits etc. from securities: taxation of amounts taken to reserves

(1) Before section 473 of the Taxes Act 1988 insert—

"**472A Trading profits etc. from securities: taxation of amounts taken to reserves**

(1) This section applies in relation to securities—

(a) which are held by a person carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities; and

(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) Profits and losses arising from such securities that in accordance with generally accepted accounting practice are—

(a) calculated by reference to the fair value of the securities, and

(b) recognised in that person's statement of recognised gains and losses or statement of changes in equity,

shall be brought into account in computing the profits or losses of a business in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (2) does not apply—

(a) to an amount to the extent that it derives from or otherwise relates to an amount brought into account under that subsection in an earlier period of account, or

(b) to an amount recognised for accounting purposes by way of correction of a fundamental error.

(4) In this section, "securities"—

(a) includes shares and any rights, interests or options that by virtue of section 99, 135(5) or 136(5) of the Taxation of Chargeable Gains Act 1992 are treated as shares for the purposes of sections 126 to 136 of that Act; but

(b) does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996).".

(2) This section has effect in relation to—

(a) periods of account beginning on or after 1st January 2005, and

(b) in the case of a company required to prepare accounts under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), any period of account beginning before that date for which the company is required or permitted to prepare such accounts in accordance with international accounting standards.

Miscellaneous

55 Duty of company to give notice of coming within charge to corporation tax

(1) A company must give notice to the Board—

(a) of the beginning of its first accounting period, and

(b) of the beginning of any subsequent accounting period that does not immediately follow the end of a previous accounting period.

(2) The notice required by this section—

(a) must be in writing;

(b) must state when the accounting period began;

(c) must contain such other information as may be prescribed;

(d) may be given to any officer of the Board; and

(e) must be given not later than three months after the beginning of the accounting period.

(3) "Prescribed" in subsection (2)(c) means prescribed by regulations made by the Board.

(4) A company that has a reasonable excuse for failing to give notice as required by this section—

(a) is not to be regarded as having failed to comply with this section until the excuse ceases, and

(b) after the excuse ceases is not to be regarded as having failed to comply with this section if the required notice is given without unreasonable delay after the excuse ceases.

(5) In this section—

(a) "accounting period" means an accounting period for the purposes of corporation tax;

(b) "company" means a body corporate and does not include an unincorporated association or a partnership; and

(c) "the Board" means the Commissioners of Inland Revenue.

(6) In the second column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), at the appropriate place insert—

"section 55 of the Finance Act 2004".

(7) This section applies in relation to accounting periods beginning on or after the day on which this Act is passed.

56 Relief for community amateur sports clubs

(1) Schedule 18 to the Finance Act 2002 (c. 23) (relief for community amateur sports clubs) is amended as follows.

(2) In paragraph 4(1)(b) (exemption for trading income not exceeding £15,000 etc) for "£15,000" substitute "£30,000".

(3) In paragraph 6(1)(b) (exemption for property income not exceeding £10,000 etc) for "£10,000" substitute "£20,000".

(4) The amendments made by this section have effect in relation to accounting periods ending on or after 1st April 2004.

(5) Where an accounting period begins before, and ends on or after, 1st April 2004, the amendments made by subsections (2) and (3) have effect as if—

(a) the part falling before that date and the part falling on or after it were two separate accounting periods, and

(b) the club's trading income and property income for each of those parts were the proportionally reduced amount of its trading income and property income for the actual accounting period.

(6) In this section—

"property income" has the same meaning as in paragraph 6 of Schedule 18 to the Finance Act 2002;

"trading income" has the same meaning as in paragraph 4 of that Schedule.

CHAPTER 3

CONSTRUCTION INDUSTRY SCHEME

Introduction

57 Introduction

(1) This Chapter provides for certain payments (see section 60) under construction contracts to be made under deduction of sums on account of tax (see sections 61 and 62).

(2) In this Chapter "construction contract" means a contract relating to construction operations (see section 74) which is not a contract of employment but where—

(a) one party to the contract is a sub-contractor (see section 58); and

(b) another party to the contract ("the contractor") either—

(i) is a sub-contractor under another such contract relating to all or any of the construction operations, or

(ii) is a person to whom section 59 applies.

(3) In sections 60 and 61 "the contractor" has the meaning given by this section.

(4) In this Chapter—

(a) references to registration for gross payment are to registration under section 63(2),

(b) references to registration for payment under deduction are to registration under section 63(3), and

(c) references to registration under section 63 are to registration for gross payment or registration for payment under deduction.

(5) To the extent that any provision of this Chapter would not, apart from this subsection, form part of the Tax Acts, it shall be taken to form part of those Acts.

58 Sub-contractors

For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—

(a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or

(b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

59 Contractors

(1) This section applies to the following bodies or persons—

(a) any person carrying on a business which includes construction operations;

(b) any public office or department of the Crown (including any Northern Ireland department and any part of the Scottish Administration);

(c) the Corporate Officer of the House of Lords, the Corporate Officer of the House of Commons and the Scottish Parliamentary Corporate Body;

(d) any local authority;

(e) any development corporation or new town commission;

(f) the Commission for the New Towns;

(g) the Secretary of State if the contract is made by him under section 89 of the Housing Associations Act 1985 (c. 69);

(h) the Housing Corporation, a housing association, a housing trust, Scottish Homes, and the Northern Ireland Housing Executive;

(i) any NHS trust;

(j) any HSS trust;

(k) any such body or person, being a body or person (in addition to those falling within paragraphs (b) to (j)) which has been established for the purpose of carrying out functions conferred on it by or under any enactment, as may be designated as a body or person to which this section applies in regulations made by the Board of Inland Revenue;

(l) a person carrying on a business at any time if—

(i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds £1,000,000, or

(ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on

construction operations for the part of that period during which he has been carrying on the business exceeds £1,000,000.

(2) But this section only applies to a body or person falling within subsection (1)(b) to (f) or (h) to (k) if—

(a) in any period of three years, that body or person has had an average annual expenditure on construction operations of more than £1,000,000, and

(b) since the condition in paragraph (a) was last satisfied, there have not been three successive years in each of which the body or person has had expenditure on construction operations of less than £1,000,000.

In this subsection "year" means a year ending with 31st March.

(3) Where section 57(2)(b) begins to apply to a person in any period of account by virtue of his falling within subsection (1)(l), it shall continue to apply to him until he satisfies the Board of Inland Revenue that his expenditure on construction operations has been less than £1,000,000 in each of three successive years beginning in or after that period of account.

(4) Where the whole or part of a trade is transferred by a company ("the transferor") to another company ("the transferee") and section 343 of the Taxes Act 1988 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—

(a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer is to be treated as if it had been incurred at that time by the transferee; and

(b) where only a part of the trade is transferred, the expenditure is to be apportioned in such manner as appears to the Board of Inland Revenue, or on appeal to the Commissioners, to be just and reasonable.

(5) In this section—

"development corporation" has the same meaning as in—

(a) the New Towns Act 1981 (c. 64), or

(b) the New Towns (Scotland) Act 1968 (c. 16);

"enactment" includes an enactment comprised in an Act of the Scottish Parliament and a provision comprised in Northern Ireland legislation;

"housing association" has the same meaning as in—

(a) the Housing Associations Act 1985 (c. 69), or

(b) Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/ 1725 (N.I. 15));

"housing trust" has the same meaning as in the Housing Associations Act 1985;

"HSS trust" means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));

"new town commission" has the same meaning as in the New Towns Act (Northern Ireland) 1965 (c. 13 (N.I.));

"NHS trust" means a National Health Service trust—

(a) established under Part 1 of the National Health Service and Community Care Act 1990 (c. 19), or

(b) constituted under section 12A of the National Health Service (Scotland) Act 1978 (c. 29).

(6) In this section references to a body or person include references to an office or department.

(7) The Board of Inland Revenue may make regulations amending this section for the purpose of removing references to bodies which have ceased to exist.

Deductions on account of tax from contract payments to sub-contractors

60 Contract payments

(1) In this Chapter "contract payment" means any payment which is made under a construction contract and is so made by the contractor (see section 57(3)) to—

(a) the sub-contractor,

(b) a person nominated by the sub-contractor or the contractor, or

(c) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.

(2) But a payment made under a construction contract is not a contract payment if any of the following exceptions applies in relation to it.

(3) This exception applies if the payment is treated as earnings from an employment by virtue of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (agency workers).

(4) This exception applies if the person to whom the payment is made or, in the case of a payment made to a nominee, each of the following persons—

(a) the nominee,

(b) the person who nominated him, and

(c) the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made,

is registered for gross payment when the payment is made.

But this is subject to subsections (5) and (6).

(5) Where a person is registered for gross payment as a partner in a firm (see section 64), subsection (4) applies only in relation to payments made under contracts under which—

(a) the firm is a sub-contractor, or

(b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.

(6) Where a person is registered for gross payment otherwise than as a partner in a firm but he is or becomes a partner in a firm, subsection (4) does not apply in relation to payments made under contracts under which—

(a) the firm is a sub-contractor, or

(b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.

(7) This exception applies if such conditions as may be prescribed in regulations made by the Board of Inland Revenue for the purposes of this subsection are satisfied; and those conditions may relate to any one or more of the following—

(a) the payment,

(b) the person making it, and
(c) the person receiving it.

(8) For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations is to be taken to be made under the contract; and if—
(a) the obligation is to make a payment to a person ("A") within paragraph (a) to (c) of subsection (1), but
(b) the payment discharging that obligation is made to a person ("B") not within those paragraphs,

the payment is for those purposes to be taken to be made to A.

61 Deductions on account of tax from contract payments

(1) On making a contract payment the contractor (see section 57(3)) must deduct from it a sum equal to the relevant percentage of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates.

(2) In subsection (1) "the relevant percentage" means such percentage as the Treasury may by order determine.

(3) That percentage must not exceed—
(a) if the person for whose labour (or for whose employees' or officers' labour) the payment in question is made is registered for payment under deduction, the percentage which is the basic rate for the year of assessment in which the payment is made, or
(b) if that person is not so registered, the percentage which is the higher rate for that year of assessment.

62 Treatment of sums deducted

(1) A sum deducted under section 61 from a payment made by a contractor—
(a) must be paid to the Board of Inland Revenue, and
(b) is to be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

(2) If the sub-contractor is not a company a sum deducted under section 61 and paid to the Board is to be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions is to be treated as being Class 4 contributions paid in respect of those profits.

(3) If the sub-contractor is a company—
(a) a sum deducted under section 61 and paid to the Board is to be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;
(b) regulations must provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;

(c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and

(d) regulations must provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).

(4) For the purposes of subsection (3) the "relevant liabilities" of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to the Inland Revenue in pursuance of an obligation as an employer or contractor.

(5) In this section—

(a) "the sub-contractor" means the person for whose labour (or for whose employees' or officers' labour) the payment is made;

(b) references to the sub-contractor's "relevant profits" are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;

(c) "Class 4 contributions" means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 (c. 4) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

(6) References in this section to regulations are to regulations made by the Board of Inland Revenue.

(7) Regulations under this section may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate.

Registration of sub-contractors

63 Registration for gross payment or for payment under deduction

(1) If the Board of Inland Revenue are satisfied, on the application of an individual or a company, that the applicant has provided—

(a) such documents, records and information as may be required by or in accordance with regulations made by the Board, and

(b) such additional documents, records and information as may be required by the Inland Revenue in connection with the application,

the Board must register the individual or company under this section.

(2) If the Board are satisfied that the requirements of subsection (2), (3) or (4) of section 64 are met, the Board must register—

(a) the individual or company, or

(b) in a case falling within subsection (3) of that section, the individual or company as a partner in the firm in question,

for gross payment.

(3) In any other case, the Board must register the individual or company for payment under deduction.

64 Requirements for registration for gross payment

(1) This section sets out the requirements (in addition to that in subsection (1) of section 63) for an applicant to be registered for gross payment.

(2) Where the application is for the registration for gross payment of an individual (otherwise than as a partner in a firm), he must satisfy the conditions in Part 1 of Schedule 11 to this Act.

(3) Where the application is for the registration for gross payment of an individual or a company as a partner in a firm—

(a) the applicant must satisfy the conditions in Part 1 of Schedule 11 to this Act (if an individual) or Part 3 of that Schedule (if a company), and

(b) in either case, the firm itself must satisfy the conditions in Part 2 of that Schedule.

(4) Where the application is for the registration for gross payment of a company (otherwise than as a partner in a firm)—

(a) the company must satisfy the conditions in Part 3 of Schedule 11 to this Act, and

(b) if the Board of Inland Revenue have given a direction under subsection (5), each of the persons to whom any of the conditions in Part 1 of that Schedule applies in accordance with the direction must satisfy the conditions which so apply to him.

(5) Where the applicant is a company, the Board may direct that the conditions in Part 1 of Schedule 11 to this Act or such of them as are specified in the direction shall apply to—

(a) the directors of the company,

(b) if the company is a close company, the persons who are the beneficial owners of shares in the company, or

(c) such of those directors or persons as are so specified,

as if each of them were an applicant for registration for gross payment.

(6) See also section 65(1) (power of Board to make direction under subsection (5) on change in control of company applying for registration etc).

(7) In subsection (5) "director" has the meaning given by section 67 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

65 Change in control of company registered for gross payment

(1) Where it appears to the Board of Inland Revenue that there has been a change in the control of a company—

(a) registered for gross payment, or

(b) applying to be so registered,

the Board may make a direction under section 64(5).

(2) The Board may make regulations requiring the furnishing of information with respect to changes in the control of a company—

(a) registered for gross payment, or

(b) applying to be so registered.

(3) Section 840 of the Taxes Act 1988 (control) applies for the purposes of this section.

66 Cancellation of registration for gross payment

(1) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if it appears to them that—

(a) if an application to register the person for gross payment were to be made at that time, the Board would refuse so to register him,

(b) he has made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or

(c) he has failed to comply (whether as a contractor or as a sub-contractor) with any such provision.

(2) Where the Board make a determination under subsection (1), the person's registration for gross payment is cancelled with effect from the end of a prescribed period after the making of the determination (but see section 67(5)).

(3) The Board of Inland Revenue may at any time make a determination cancelling a person's registration for gross payment if they have reasonable grounds to suspect that the person—

(a) became registered for gross payment on the basis of information which was false,

(b) has fraudulently made an incorrect return or provided incorrect information (whether as a contractor or as a sub-contractor) under any provision of this Chapter or of regulations made under it, or

(c) has knowingly failed to comply (whether as a contractor or as a sub-contractor) with any such provision.

(4) Where the Board make a determination under subsection (3), the person's registration for gross payment is cancelled with immediate effect.

(5) On making a determination under this section cancelling a person's registration for gross payment, the Board must without delay give the person notice stating the reasons for the cancellation.

(6) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (1), the person must be registered for payment under deduction.

(7) Where a person's registration for gross payment is cancelled by virtue of a determination under subsection (3), the person may, if the Board thinks fit, be registered for payment under deduction.

(8) A person whose registration for gross payment is cancelled under this section may not, within the period of one year after the cancellation takes effect (see subsections (2) and (4) and section 67(5)), apply for registration for gross payment.

(9) In this section "a prescribed period" means a period prescribed by regulations made by the Board.

67 Registration for gross payment: appeals

(1) A person aggrieved by—

(a) the refusal of an application for registration for gross payment, or

(b) the cancellation of his registration for gross payment,

may by notice appeal to the General Commissioners or, if the person so elects in the notice, to the Special Commissioners.

(2) The notice must be given to the Board of Inland Revenue within 30 days after the refusal or cancellation.

(3) The notice must state the person's reasons for believing that—

(a) the application should not have been refused, or

(b) his registration for gross payment should not have been cancelled.

(4) The jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board of Inland Revenue in the exercise of their functions under section 63, 64, 65 or 66.

(5) Where a person appeals against the cancellation of his registration for gross payment by virtue of a determination under section 66(1), the cancellation of his registration does not take effect until whichever is the latest of the following—

(a) the abandonment of the appeal,

(b) the determination of the appeal by the Commissioners, or

(c) the determination of the appeal by the appropriate court.

(6) In this section "the appropriate court" means—

(a) in relation to England and Wales, the High Court;

(b) in relation to Scotland, the Court of Session, as the Court of Exchequer in Scotland;

(c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland.

68 Registration for payment under deduction: cancellation and appeals

The Board of Inland Revenue may make regulations providing for—

(a) the cancellation, in such circumstances as may be prescribed by the regulations, of a person's registration for payment under deduction;

(b) appeals against a refusal to register a person for payment under deduction or the cancellation of such registration.

Verification, returns etc and penalties

69 Verification etc of registration status of sub-contractors

(1) The Board of Inland Revenue may make regulations requiring persons who make payments under contracts relating to construction operations, except in prescribed circumstances, to verify with the Board whether a person to whom they are proposing to make—

(a) a contract payment, or

(b) a payment which would be a contract payment but for section 60(4),

is registered for gross payment or for payment under deduction.

(2) The provision that may be made by regulations under subsection (1) includes provision—

(a) for preventing a person from verifying unless such conditions as may be prescribed have been satisfied;

(b) as to the period for which the verification remains valid.

(3) The Board of Inland Revenue may make regulations requiring the Board to notify persons of a prescribed description who make payments under contracts relating to construction operations that—

(a) a person registered for gross payment has become registered for payment under deduction or has ceased to be registered under section 63, or

(b) a person registered for payment under deduction has become registered for gross payment or has ceased to be registered under section 63.

(4) The provision that may be made by regulations under subsection (1) or (3) includes provision for a person to be entitled to assume, except in prescribed circumstances, that—

(a) a person verified or notified as being registered for gross payment, or

(b) a person verified or notified as being registered for payment under deduction,

has not subsequently ceased to be so registered.

(5) In this section "prescribed" means prescribed by regulations under this section.

70 Periodic returns by contractors etc

(1) The Board of Inland Revenue may make regulations requiring persons who make payments under construction contracts—

(a) to make to the Board, at such times and in respect of such periods as may be prescribed, returns relating to such payments;

(b) to keep such records as may be prescribed relating to such payments;

(c) to provide such information as may be prescribed, at such times as may be prescribed, to persons to whom such payments are made or to such of those persons as are of a prescribed description.

(2) The provision that may be made by regulations under subsection (1)(a) includes provision requiring, except in such circumstances as may be prescribed,—

(a) the person making a return to declare in the return that none of the contracts to which the return relates is a contract of employment;

(b) the person making a return to declare in the return that, in the case of each person to whom a payment to which the return relates is made, he has complied with the requirements of any regulations made under section 69(1) (verification of registration status);

(c) returns to contain such other information and to be in such form as may be prescribed;

(d) a return to be made where no payments have been made in the period to which the return relates.

(3) The Board of Inland Revenue may make regulations with respect to—

(a) the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in subsection (1)(b), and

(b) rights of access to, or copies of, any such records which are removed.

(4) Regulations under this section may make provision—

(a) for or in connection with enabling a person who makes payments under construction contracts to appoint another person (a "scheme representative")

to act on his behalf in connection with any requirements imposed on him by regulations under this section, and

(b) as to the rights, obligations or liabilities of scheme representatives.

(5) In this section "prescribed" means prescribed by regulations under this section.

71 Collection and recovery of sums to be deducted

(1) The Board of Inland Revenue must make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 61.

(2) The regulations may include any matters with respect to which PAYE regulations may be made.

(3) Interest required to be paid by the regulations—

(a) is to be paid without any deduction of income tax, and

(b) is not to be taken into account in computing any income, profits or losses for any tax purposes.

72 Penalties

If a person, for the purpose of becoming registered for gross payment or for payment under deduction,—

(a) makes any statement, or furnishes any document, which he knows to be false in a material particular, or

(b) recklessly makes any statement, or furnishes any document, which is false in a material particular,

he shall be liable to a penalty not exceeding £3,000.

Supplementary

73 Regulations under this Chapter: supplementary

(1) The Board of Inland Revenue may by regulations make such other provision for giving effect to this Chapter as they consider necessary or expedient.

(2) The provision that may be made by regulations under subsection (1) includes provision for or in connection with modifying the application of this Chapter in circumstances where—

(a) a person acts as the agent of a contractor or sub-contractor;

(b) a person's right to payments under a construction contract is assigned or otherwise transferred to another person.

(3) Regulations under this Chapter may make different provision for different cases.

(4) Any power under this Chapter to make regulations authorising or requiring a document (whether or not of a particular description), or any records or information, to be given or requested by or to be sent or produced to the Board of Inland Revenue includes power—

(a) to authorise the Board to nominate a person who is not an officer of the Board to be the person who on behalf of the Board—

(i) gives or requests the document, records or information; or

(ii) is the recipient of the document, records or information; and

(b) to require the document, records or information, in cases prescribed by or determined under the regulations, to be sent or produced to the address (determined in accordance with the regulations) of the person nominated by the Board to receive it on their behalf.

74 Meaning of "construction operations"

(1) In this Chapter "construction operations" means operations of a description specified in subsection (2), not being operations of a description specified in subsection (3); and references to construction operations—

(a) except where the context otherwise requires, include references to the work of individuals participating in the carrying out of such operations; and

(b) do not include references to operations carried out or to be carried out otherwise than in the United Kingdom (or the territorial sea of the United Kingdom).

(2) The following operations are, subject to subsection (3), construction operations for the purposes of this Chapter—

(a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (in particular) walls, roadworks, power-lines, electronic communications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;

(d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) painting or decorating the internal or external surfaces of any building or structure;

(f) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works.

(3) The following operations are not construction operations for the purposes of this Chapter—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals and tunnelling or boring, or construction of underground works, for this purpose;

(c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

(f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;

(g) signwriting and erecting, installing and repairing signboards and advertisements;

(h) the installation of seating, blinds and shutters;

(i) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

(4) The Treasury may by order made by statutory instrument amend either or both of subsections (2) and (3) by—

(a) adding,

(b) varying, or

(c) removing,

any description of operations.

(5) No statutory instrument containing an order under subsection (4) shall be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

75 Meaning of "the Inland Revenue" etc and delegation of Board's functions

(1) In this Chapter "the Inland Revenue" means any officer of the Board of Inland Revenue.

(2) In this Chapter "the Board of Inland Revenue" means the Commissioners of Inland Revenue (as to which, see in particular the Inland Revenue Regulation Act 1890 (c. 21)).

(3) The Board of Inland Revenue may make regulations providing for any of the following to be done on behalf of the Board—

(a) the registration of persons under section 63;

(b) the giving of directions under section 64(5); and

(c) the cancellation under section 66 of a person's registration for gross payment.

76 Consequential amendments

Schedule 12 to this Act (which makes consequential amendments) has effect.

77 Commencement and transitional provision

(1) This Chapter has effect in relation to payments made on or after the appointed day under contracts relating to construction operations.

(2) Where a certificate issued to a person under section 561 of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for gross payment.

(3) Where a registration card issued to a person in accordance with regulations made under section 566(2A) of the Taxes Act 1988 is in force immediately before the appointed day, the person is to be treated as if, on the appointed day, the Board of Inland Revenue had registered him for payment under deduction.

(4) Subsection (5) applies in relation to the first payment ("the relevant payment") made after the appointed day by a person ("C") to a sub-contractor ("SC") under a contract relating to construction operations if—

(a) before the appointed day, C had made one or more payments to SC under the contract or another such contract,

(b) the last of those payments ("the last payment") was made in the year of assessment in which the relevant payment was made or in either of the two years of assessment before that,

(c) at the time of the last payment—

(i) a certificate issued to SC under section 561 of the Taxes Act 1988 was in force, or

(ii) a registration card issued to SC in accordance with regulations made under section 566(2A) of that Act was in force, and

(d) on making the relevant payment, C has no reason to believe that SC—

(i) did not become registered for gross payment or (as the case may be) for payment under deduction by virtue of subsection (2) or (3), and

(ii) is not still so registered.

(5) Where this subsection applies, regulations under section 69(1) shall not require C, before making the relevant payment, to verify whether SC is registered for gross payment or for payment under deduction.

(6) Where subsection (5) applies, C shall be entitled to assume, on making any further payments to SC under a contract relating to construction operations, that SC has not subsequently ceased to be so registered, unless notified to the contrary in accordance with regulations made under section 69(3).

(7) In this section "the appointed day" means such day as the Treasury may by order appoint.

(8) The Treasury may by order make such further supplemental and transitional provision and savings as they think fit in connection with the coming into effect of this Chapter.

CHAPTER 4

PERSONAL TAXATION

Taxable benefits

78 Childcare and childcare vouchers

(1) Schedule 13 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) relating to childcare and childcare vouchers.

(2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

79 Exemption for loaned computer equipment

(1) In Chapter 11 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: miscellaneous exemptions), section 320 (limited exemption for computer equipment) is amended as follows.

(2) For subsection (1) substitute—

"(1) If conditions A and B are met in respect of the provision of computer equipment—

(a) no liability to income tax arises by virtue of section 62 (general definition of earnings), and

(b) liability to income tax by virtue of Chapter 10 of Part 3 (taxable benefits: residual liability to charge) arises only in respect of so much of the aggregate cash equivalent of the benefit in the tax year as exceeds £500.".

(3) Omit subsections (4) and (5).

(4) This section has effect for the year 2004-05 and subsequent years of assessment.

80 Vans

(1) Schedule 14 to this Act contains amendments of the Income Tax (Earnings and Pensions) Act 2003 relating to vans.

(2) The amendments have effect for the year 2005-06 and subsequent years of assessment.

81 Emergency vehicles

(1) In the Income Tax (Earnings and Pensions) Act 2003, after section 248 insert—

"**248A Emergency vehicles**

(1) This section applies where—

(a) an emergency vehicle is made available to a person employed in an emergency service for the person's private use,

(b) the terms on which it is made available prohibit its private use otherwise than when the person is on call or engaged in on-call commuting, and

(c) the person does not make private use of it otherwise than in such circumstances.

(2) No liability to income tax arises by virtue of Chapter 6 or 10 of Part 3 (taxable benefits: cars, vans etc. and residual liability to charge) in respect of the benefit.

(3) "Emergency vehicle" means a vehicle which is used to respond to emergencies and which either—

(a) has fixed to it a lamp designed to emit a flashing light for use in emergencies, or

(b) would have such a lamp fixed to it but for the fact that (if it did) a special threat to the personal physical security of those using it would

arise by reason of it being apparent that they were employed in an emergency service.

(4) The following are "employed in an emergency service"—

(a) constables and other persons employed for police purposes,

(b) persons employed for the purposes of a fire, or fire and rescue, service, and

(c) persons employed in the provision of ambulance or paramedic services.

(5) The Treasury may by order amend subsection (4).

(6) "Private use", in relation to a person, means any use other than for the person's business travel; and "business travel" has the same meaning as in Chapter 6 of Part 3 (see section 171(1)).

(7) A person to whom an emergency vehicle is made available is on call when liable, as part of normal duties, to be called on to use the emergency vehicle to respond to emergencies.

(8) A person to whom an emergency vehicle is made available is engaged in on-call commuting when the person—

(a) is using it for ordinary commuting or for travel between two places that is for practical purposes substantially ordinary commuting, and

(b) is required to do so in order that it is available for use by the person, as part of normal duties, for responding to emergencies.".

(2) In section 236(2)(c) of that Act (mileage allowance and passenger payments: meaning of "company vehicle"), after "vans)" insert "and section 248A (emergency vehicles)".

(3) This section has effect for the year 2004-05 and subsequent years of assessment.

82 European travel expenses of MPs and other representatives

(1) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

(2) In section 294 (EU travel expenses of MPs and other representatives) in subsection (1) (exemption from income tax in respect of sums paid to Members of the House of Commons and other representatives in respect of EU travel expenses) for "EU" (in both places) substitute "European".

(3) In that section, for subsections (2) to (4) substitute—

"(2) "European travel expenses" means the cost of, and any additional expenses incurred in, travelling between the United Kingdom and a relevant European location.

(3) "Relevant European location" means—

(a) a European Union institution or agency, or

(b) the national parliament of—

(i) another member State,

(ii) a candidate or applicant country, or

(iii) a member State of the European Free Trade Association.

(4) The Treasury may by order amend subsection (3) by—

(a) adding a European location,
(b) removing a European location, or
(c) varying the description of a European location.".

(4) In the heading of that section, "EU" accordingly becomes "European".

(5) This section has effect in relation to sums paid in respect of costs or expenses incurred on or after 6th April 2004.

Gift aid

83 Giving through the self-assessment return

(1) This section applies where—

(a) as a result of the making by an individual of a personal return for a year of assessment, a tax repayment in respect of one or more years of assessment falls to be made to him,

(b) the personal return contains a single direction, in the form specified in the return, requiring—

(i) the whole of the tax repayment, or

(ii) so much of the tax repayment as does not exceed a specified amount,

to be paid on his behalf as a gift to a single specified charity,

(c) the direction also requires the gift to be treated as a qualifying donation for the purposes of section 25 of the Finance Act 1990 (c. 29) (gift aid), and

(d) the gift satisfies the requirements of subsection (2) of that section.

(2) The gift is to be treated as a qualifying donation for the purposes of that section made by the individual at the time the payment is received by the charity.

(3) Section 98 of the Finance Act 2002 (c. 23) (gift aid: election to be treated as if gift made in previous tax year) accordingly does not apply to the gift.

(4) The charity is to be treated as having made a claim for any exemption which may be available under section 505(1)(c)(ii) of the Taxes Act 1988 (charities: exemption from tax under Case III of Schedule D) as a result of the charity's receipt of the gift (see section 25(10) of the Finance Act 1990).

(5) In this section—

"charity" means a charity within the meaning of section 25 of the Finance Act 1990 (see subsection (12)(a) of that section) which, at the time the personal return in question is made, is included (at the request of the charity) in a list maintained for the purposes of this section by the Board;

"personal return" means a return under section 8 of the Taxes Management Act 1970 (c. 9) (personal return);

"tax repayment" means a repayment (after any set-off that falls to be made against the individual's liabilities) of either or both of—

(a) income tax or amounts paid on account of income tax;

(b) capital gains tax;

and, for the purposes of subsection (1)(b), includes any repayment supplement (within the meaning of section 824 of the Taxes Act 1988 or section 283 of the Taxation of Chargeable Gains Act 1992 (c. 12)).

(6) In section 25 of the Finance Act 1990 (c. 29) (gift aid) after subsection (12) insert—

"(13) This section is to be read with—

(a) section 98 of the Finance Act 2002 (gift aid: election to be treated as if gift made in previous tax year);

(b) section 83 of the Finance Act 2004 (gift aid: giving through the self-assessment return).".

(7) This section has effect in relation to personal returns for the year 2003-04 and subsequent years of assessment.

Gifts with a reservation

84 Charge to income tax by reference to enjoyment of property previously owned

(1) Schedule 15 (which contains provisions imposing a charge to income tax by reference to benefits received in certain circumstances by a former owner of property) has effect.

(2) That Schedule has effect for the year 2005-06 and subsequent years of assessment.

Employment-related securities and options

85 Relief where national insurance contributions met by employee

(1) Schedule 16 to this Act provides—

(a) for income tax relief in certain cases where national insurance contributions are met by an employee, and

(b) for consequential amendments.

(2) This section (and that Schedule) come into force in accordance with provision made by the Treasury by order made by statutory instrument.

86 Shares in employee-controlled companies and unconnected companies

(1) Each of the provisions of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: securities) specified in subsection (2) (exception from charges for certain company shares) is amended in accordance with subsections (3) to (5).

(2) The provisions are—

(a) section 429 (restricted securities),

(b) section 443 (convertible securities),

(c) section 446R (securities acquired for less than market value), and

(d) section 449 (post-acquisition benefits from securities).

(3) In subsection (1) of each of those sections, after paragraph (b) (but before the word "and" where that word features at the end) insert—

"(ba) subsection (1A) is satisfied,".

(4) After subsection (1) of each of those sections insert—

"(1A) This subsection is satisfied if the avoidance of tax or national insurance contributions was not the main purpose, or one of the main purposes, of the arrangements under which the right or opportunity to acquire the employment-related securities was made available.".

(5) In subsection (4) of sections 429, 443 and 446R, and in subsection (3) of section 449, for the words after "are not" substitute "employment-related securities."; and accordingly omit sections 429(5), 443(5), 446R(5) and 449(4).

(6) In Chapter 3A of that Part of that Act (securities with artificially depressed market value), after section 446I insert—

"**446IA Disapplication of exceptions from charges**

(1) Section 429 (exception from charge under section 426 for certain company shares) does not prevent section 426 (restricted securities: chargeable events) applying in relation to an event if section 446E or 446I(1)(a) would have effect in relation to the event.

(2) Section 443 (exception from charge under section 438 for certain company shares) does not prevent section 438 (convertible securities: chargeable events) applying in relation to an event if section 446G, 446H or 446I(1)(b) would have effect in relation to the event.

(3) Section 446R (exception from charge under Chapter 3C for certain company shares) does not prevent that Chapter (securities acquired for less than market value) applying in relation to employment-related securities if section 446B would have effect in relation to them.

(4) Section 449 (exception from charge under Chapter 4 for certain company shares) does not prevent that Chapter (benefits from securities) applying in relation to a benefit if section 446I(1)(e) would have effect in relation to the benefit.".

(7) In Chapter 3B of that Part of that Act (securities with artificially enhanced market value), after section 446N insert—

"**446NA Disapplication of exceptions from charges**

(1) None of the provisions specified in subsection (2) (exceptions from charges for certain company shares) apply in relation to employment-related securities if the market value of the employment-related securities at the time of the acquisition has been increased by at least 10% by non-commercial increases within the period of 7 years ending with the acquisition.

(2) The provisions are—

(a) section 429 (restricted securities),

(b) section 443 (convertible securities),

(c) section 446R (securities acquired for less than market value), and

(d) section 449 (post-acquisition benefits from securities).

(3) If section 446L (market value on valuation date increased by more than 10% by non-commercial increases during relevant period) applies in relation to

employment-related securities, section 429 does not subsequently apply in relation to the employment-related securities.".

(8) This section applies on and after 7th May 2004.

87 Restricted securities with artificially depressed value

(1) Section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employee securities with artificially depressed market value: charge on restricted securities) is amended as follows.

(2) In subsection (1), after "on restricted securities)," insert—

"(aa) immediately before the employment-related securities are disposed of (in circumstances which do not constitute such an event) or are cancelled without being disposed of,".

(3) For subsections (3) to (6) substitute—

"(3) "The relevant period" is the period beginning—

(a) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, 7 years before the acquisition, and

(b) in any other case, 7 years before the relevant date,

and ending with the relevant date.

(4) "The relevant date" is—

(a) in a case within subsection (1)(a), the date on which the chargeable event concerned occurs,

(b) in a case within subsection (1)(aa), the date on which the disposal or cancellation concerned occurs, and

(c) in a case within subsection (1)(b), the 5th April concerned.

(5) Where this section applies in a case within subsection (1)(aa) or (b), a chargeable event within section 427(3)(a) (lifting of restrictions) is to be treated as occurring in relation to the employment-related securities on the relevant date.

(6) In every case where this section applies, subsection (1) of section 428 (amount of charge on restricted securities) applies as if the reference in subsection (2) of that section to what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions were to what would be their market value at the appropriate time but for the matters to be disregarded.

(7) "The appropriate time" is—

(a) in a case within subsection (1)(a) or (b), the time immediately after the chargeable event concerned, and

(b) in a case within subsection (1)(aa), the time immediately before the chargeable event concerned.

(8) "The matters to be disregarded" are—

(a) any restrictions,

(b) the things done as mentioned in subsection (2), and

(c) if the employment-related securities are about to be disposed of or cancelled, that fact.

(9) Where this section applies in a case within subsection (1)(aa), section 428(1) applies with the omission of the reference to OP.

(10) Where this section applies in a case within subsection (1)(a) and the chargeable event concerned is within section 427(3)(c) (disposal for consideration), section 428 applies with the omission of subsection (9) (case where consideration is less than actual market value).".

(4) This section applies on and after 7th May 2004.

(5) But if the employment-related securities were acquired before that date, section 446E of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) does not apply by virtue of the amendment made by subsection (2) of this section unless their market value would be artificially low immediately before the disposal or cancellation if the date on which the relevant period began were the later of—

(a) that on which it did begin, and

(b) 7th May 2004.

88 Shares under approved plans and schemes

(1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

(2) Omit section 421G (exclusion from Chapters 2 to 4 of Part 7 of shares awarded or acquired under approved plan or scheme).

(3) In Chapter 2 of Part 7 (restricted securities), after section 431 insert—

"**431A Shares under approved plan or scheme**

(1) Where employment-related securities are restricted securities or a restricted interest in securities, the employer and the employee are to be treated as making an election under section 431(1) in relation to the employment-related securities if they are shares, or an interest in shares, to which this subsection applies.

(2) Subsection (1) applies to—

(a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part) in circumstances in which (in accordance with section 490) no liability to income tax arises,

(b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part) in circumstances in which (in accordance with section 519) no liability to income tax arises,

(c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part) in circumstances in which (in accordance with section 524) no liability to income tax arises, and

(d) shares acquired by the exercise of a qualifying option within the meaning of section 527(4) (enterprise management incentives) in

circumstances in which (in accordance with section 530) no liability to income tax arises.".

(4) In section 489 (operation of tax advantages in connection with approved share incentive plans), after subsection (3) insert—

"(4) And those sections do not apply if the main purpose (or one of the main purposes) of the arrangements under which the shares in question are awarded or acquired is the avoidance of tax or national insurance contributions.".

(5) In sections 505 and 506 (charge on shares ceasing to be subject to approved share incentive plan), after subsection (4) insert—

"(4A) Any tax due under subsection (2) or (3) is reduced by the amount or aggregate amount of any tax paid by virtue of Chapter 3B of this Part in relation to the shares.".

(6) In section 519(1) (approved SAYE option schemes: no charge in respect of exercise of option) insert at the end "and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.".

(7) In section 524(1) (approved CSOP schemes: no charge in respect of exercise of option) insert at the end "and

(c) the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the option was granted or is exercised.".

(8) Section 701 (PAYE: meaning of "asset") is amended as follows.

(9) In subsection (2)(c)—

(a) in sub-paragraph (ia), for the words after "employee" substitute "under a scheme approved under Schedule 4 (approved CSOP schemes) in circumstances in which Condition A or B as set out in section 524(2) or (2A) is met;",

(b) omit sub-paragraph (ii), and

(c) in sub-paragraph (iii), after "1996" insert "where the avoidance of tax or national insurance contributions is not the main purpose (or one of the main purposes) of any arrangements under which the right was obtained or is exercised".

(10) After subsection (3) insert—

"(3A) Paragraph (c) of subsection (2) does not apply to shares after their acquisition as mentioned in that paragraph.".

(11) This section has effect on and after 18th June 2004 and (so far as it does not relate to the award or acquisition of shares) applies in relation to shares awarded or acquired before that date as well as in relation to those awarded or acquired on or after that date.

(12) Where section 431A(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (as inserted by subsection (3)) has effect (by virtue of subsection (11)) in relation to shares acquired before 18th June 2004, it applies in relation to them so as to treat an election under section 431(1) of that Act as made in relation to them on that date.

(13) For the purposes of the application of Chapter 3B of Part 7 of that Act (securities with artificially enhanced market value) by reason of subsections (2) and (11) in relation to shares acquired before 18th June 2004, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.

89 Shares acquired on public offer

(1) Section 421F of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (exclusion from Chapters 2 to 4 of Part 7 of shares acquired under terms of offer to the public) is amended as follows.

(2) In subsection (1), for "Chapters 2 to 4" substitute "Chapters 2, 3 and 3C".

(3) After that subsection insert—

"(1A) But subsection (1) does not disapply those Chapters if the main purpose (or one of the main purposes)—

(a) of the arrangements under which the right or opportunity under which the shares were acquired, or

(b) for which the shares are held,

is the avoidance of tax or national insurance contributions.".

(4) This section has effect on and after 18th June 2004 and applies in relation to shares acquired before that date as well as in relation to those acquired on or after that date.

(5) For the purposes of the application of Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (securities with artificially enhanced market value) by reason of subsections (2) and (4) in relation to shares acquired before that date, section 446O of that Act (meaning of "relevant period") has effect as if they were acquired on that date.

90 Associated persons etc.

(1) Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: securities) is amended as follows.

(2) In section 421C(2) (meaning of "relevant linked person" for purposes of Chapters 1 to 4), for "are connected or, although not connected, are" substitute "are or have been connected or (without being or having been connected) are or have been".

(3) In section 472(2) (meaning of "relevant linked person" for purposes of Chapter 5), for "are connected or, although not connected, are" substitute "are or have been connected or (without being or having been connected) are or have been".

(4) In section 477(3)(c) (chargeable events in relation to employment-related securities options), for the words after "benefit" substitute "in connection with the employment-related securities option (other than one within paragraph (a) or (b))."

(5) This section has effect on and after 18th June 2004 and applies in relation to securities, interests and options that were employment-related securities or employment-related securities options on that date (as well as those acquired on or after that date).

Miscellaneous

91 Income of spouses: jointly held property

(1) Section 282A of the Taxes Act 1988 is amended as follows.

(2) After subsection (4) insert—

"(4A) Subsection (1) above shall not apply to income consisting of a distribution arising from property consisting of—

(a) close company shares to which either the husband or the wife is beneficially entitled to the exclusion of the other, or

(b) close company shares to which they are beneficially entitled in equal or unequal shares.

In this subsection "close company shares" means shares in or securities of a close company; and for this purpose "shares" and "securities" have the same meaning as in Part 6 (see section 254).".

(3) This section has effect in relation to the year 2004-05 and subsequent years of assessment.

92 Minor amendments of or connected with ITEPA 2003

Schedule 17 to this Act contains minor amendments of or connected with the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

CHAPTER 5

ENTERPRISE INCENTIVES

93 Enterprise investment scheme

Schedule 18 (which makes amendments to the enterprise investment scheme) has effect.

94 Venture capital trusts

(1) In relation to shares issued on or after 6th April 2004 but before 6th April 2006, paragraph 1(5)(a) of Schedule 15B to the Taxes Act 1988 (calculation of income tax relief by reference to lower rate) is to have effect as if the reference to the lower rate were a reference to the higher rate.

(2) Accordingly, paragraph 3(4) of that Schedule (loss of investment relief) is to have effect in relation to such shares as if the reference to the lower rate were a reference to the higher rate.

(3) Schedule 19 (which makes amendments relating to venture capital trusts) has effect.

95 Corporate venturing scheme

Schedule 20 (which makes amendments relating to the corporate venturing scheme) has effect.

96 Enterprise management incentives: subsidiaries

(1) Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management incentives) is amended as follows.

(2) In paragraph 8 (qualifying companies: introduction) after "having only qualifying subsidiaries (see paragraphs 10 and 11)," insert—

"property managing subsidiaries (see paragraphs 11A and 11B),".

(3) In paragraph 10 (the qualifying subsidiaries requirement) for sub-paragraph (2) substitute—

"(2) In this paragraph "subsidiary" means any company which the company controls, either on its own or together with any person connected with it.

(3) For the purpose of sub-paragraph (2), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA ("control" in the context of close companies)."

(4) In paragraph 11 (meaning of "qualifying subsidiary")—

(a) in sub-paragraph (2), omit paragraphs (a) to (c),

(b) before paragraph (d) of that sub-paragraph insert—

"(ca) that the subsidiary is a 51% subsidiary of the holding company;",

(c) in paragraph (d) of that sub-paragraph, after "company" insert "or another of its subsidiaries",

(d) in paragraph (e) of that sub-paragraph, for "the conditions in paragraphs (a) to" substitute "either of the conditions in paragraphs (ca) and",

(e) omit sub-paragraph (3),

(f) after sub-paragraph (7) insert—

"(8) Sub-paragraph (9) applies at a time when the subsidiary or another company is in administration or receivership.

(9) The subsidiary is not to be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company in relation to which the conditions in sub-paragraph (2) are met if—

(a) the entry into administration or receivership, and

(b) everything done as a consequence of the company concerned 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.

(10) Section 312(2A) of ICTA (meaning of being in administration or receivership) applies for the purposes of sub-paragraphs (8) and (9) as it applies for the purposes of Chapter 3 of Part 7 of ICTA (enterprise investment scheme).".

(5) After paragraph 11 insert—

"The property managing subsidiaries requirement

11A (1) A company is not a qualifying company if it has a property managing subsidiary which is not a qualifying 90% subsidiary of the company (see paragraph 11B).

(2) "Property managing subsidiary" means a qualifying subsidiary of a company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(3) In sub-paragraph (2) "land" and "property deriving its value from land" have the same meaning as in section 776 of ICTA.

Meaning of "qualifying 90% subsidiary"

11B (1) A company ("the subsidiary") is a qualifying 90% subsidiary of a company ("the holding company") if the following conditions are met.

(2) The conditions are—

(a) that the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;

(b) that the holding company would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;

(c) that the holding company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;

(d) that no person other than the holding company has control of the subsidiary; and

(e) that no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

(3) Sub-paragraphs (4) to (10) of paragraph 11 (but not sub-paragraph (6)(b)) apply in relation to the conditions in sub-paragraph (2) above as they apply in relation to the conditions in sub-paragraph (2) of that paragraph.".

(6) The amendments made by this section have effect in relation to any right to acquire shares granted on or after 17th March 2004.

CHAPTER 6

EXEMPTION FROM INCOME TAX FOR CERTAIN INTEREST AND ROYALTY PAYMENTS

Introductory

97 Introductory

(1) This Chapter has effect for the purpose of implementing provisions of Council Directive 2003/49/EC of 3rd June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different member States ("the Directive").

(2) In this Chapter—

"company" has the same meaning as the expression "company of a member State" has for the purposes of the Directive (see Article 3(a) of the Directive);

"debt-claim" has the same meaning as in the Directive;

"the Directive" has the meaning given by subsection (1);

"EU company" means a company resident in a member State other than the United Kingdom;

"interest" and "royalties" have the meaning given by Article 2 of the Directive;

"non-EU permanent establishment" means a permanent establishment in a territory other than a member State;

"UK company" means a company resident in the United Kingdom;

"UK permanent establishment" means a permanent establishment in the United Kingdom.

(3) The Treasury may by order make such provision amending any reference in this Chapter to, or to a provision of,—

(a) the Directive, or

(b) any instrument referred to in this Chapter by virtue of an order under this subsection,

as appears to them appropriate for the purpose of giving effect to any Council Directive adopted after 8th April 2004 amending or replacing the Directive.

(4) The first order under subsection (3) may make provision having effect for periods before the making of the order.

(5) Subject to subsection (6), this Chapter has effect in relation to payments made on or after 1st January 2004.

(6) The following provisions have effect in relation to payments made on or after 8th April 2004—

(a) in section 100(2)(b), the words "and that section 104 (anti-avoidance) does not apply", and

(b) section 104.

Exemption from income tax

98 Exemption from income tax for certain interest and royalty payments

(1) No liability to income tax arises in respect of a payment of interest or a payment of a royalty if, at the time the payment is made, the following conditions are satisfied.

(2) Condition 1 is that the person making the payment is—

(a) a UK company (but not such a company's permanent establishment in a territory other than the United Kingdom), or

(b) a UK permanent establishment of an EU company.

See section 99(2) as to when a permanent establishment is to be treated as the person making the payment.

(3) Condition 2 is that the person beneficially entitled to the income in respect of which the payment is made is an EU company (but not such a company's UK permanent establishment or non-EU permanent establishment).

See section 99(3) as to when a permanent establishment is to be treated as the person beneficially entitled to the income in respect of which the payment is made.

(4) Condition 3 is that the company in Condition 1 and the company in Condition 2 are 25% associates (see section 99(4)).

(5) Condition 4 is that, if the payment is a payment of interest, the Board has issued an exemption notice in accordance with regulations under section 100.

(6) This section is subject to—

section 103 (special relationships), and

section 104 (anti-avoidance).

99 Permanent establishments and "25% associates"

(1) This section has effect for supplementing section 98 and is to be construed as one with it.

(2) For the purposes of Condition 1, a permanent establishment in a territory of a company that is resident in another territory is to be treated as the person making the payment (instead of the company) if, and to the extent that, (within the meaning of Article 1(3) of the Directive) the payment represents a tax-deductible expense for the permanent establishment in the territory in which it is situated.

(3) For the purposes of Condition 2, an EU company's UK permanent establishment or non-EU permanent establishment is to be treated as the person beneficially entitled to the income in respect of which the payment is made (instead of the company) if, and to the extent that, (within the meaning of Article 1(5) of the Directive)—

(a) the debt-claim, right or use of information in respect of which the payment arises is effectively connected with the permanent establishment, and

(b) the payment represents income in respect of which the permanent establishment is subject in the territory in which it is situated to United Kingdom corporation tax or a tax corresponding to that tax.

(4) For the purposes of Condition 3, two companies are "25% associates" if—

(a) one holds directly—

(i) 25% or more of the capital in the other, or

(ii) 25% or more of the voting rights in the other, or

(b) a third company holds directly—

(i) 25% or more of the capital in each of them, or

(ii) 25% or more of the voting rights in each of them.

Exemption notices

100 Interest payments: exemption notices

(1) The Board may make regulations about exemption notices under section 98(5).

(2) The provision that may be made by the regulations includes provision for or in connection with any of the following—

(a) enabling an exemption notice to be issued only on the request of a person of a prescribed description;

(b) requiring a person requesting the issue of an exemption notice to certify that Conditions 1 to 3 in section 98 are satisfied and that section 104 (anti-avoidance) does not apply;

(c) the information to be provided in the certificate;

(d) the person to whom an exemption notice is to be given;

(e) in a case where section 103 (special relationships) applies or may apply to a payment of interest, an exemption notice to specify the amount of the payment, or to specify the method to be used for determining the amount of the payment, in relation to which the notice has effect;

(f) imposing a time limit for the issue of an exemption notice;

(g) imposing notification requirements;

(h) the cancellation of exemption notices by the Board;

(i) exemption notices to become ineffective in prescribed circumstances;

(j) the making of appeals (for example, against a refusal to grant, or the cancellation of, an exemption notice);

(k) authorising, in cases where—

(i) an exemption notice has been issued,

(ii) tax has not been deducted from a payment of interest, and

(iii) any of the Conditions in section 98 was not satisfied in the case of the payment,

the recovery of that tax by assessment or by deduction from subsequent payments.

Payment without deduction

101 Payment of royalties without deduction at source

(1) Where—

(a) section 349(1) of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) applies to a payment of a royalty, but

(b) at the time the payment is made, the company making the payment reasonably believes that section 98 applies to the payment,

the company may, if it thinks fit, make the payment without deduction of tax under section 349(1).

(2) But if section 98 does not in fact apply to the payment, section 350 of, and Schedule 16 to, the Taxes Act 1988 (charge to tax where payments are made under section 349 etc) are to have effect as if subsection (1) never applied in relation to the payment.

(3) If the Board are not satisfied that section 98 will apply to one or more payments of royalties to be made by a company, they may direct the company that subsection (1) is not to apply to the payment or payments.

(4) A direction under subsection (3) may be varied or revoked by a subsequent such direction.

(5) If, before a payment of a royalty is made, the company beneficially entitled to the income in respect of which the payment is to be made—

(a) believed that section 98 would apply to the payment, but

(b) has subsequently become aware that any of Conditions 1 to 3 in section 98 has ceased to be satisfied,

it must without delay notify the Board and the company which is to make the payment.

(6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (c. 36) (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to subsections (1) to (4) of this section.

(7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6), has effect as if—

(a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3,000, and

(b) sub-paragraphs (2) and (3) were omitted.

102 Claim for tax deducted at source from exempt interest or royalty payments

A claim for relief under section 98 in respect of a payment which is made subject to deduction of tax under section 349 of the Taxes Act 1988 shall be made to the Board.

Special relationships and anti-avoidance

103 Special relationships

(1) In any case where—

(a) apart from this section, section 98 would apply in relation to a payment of interest or of a royalty,

(b) at the time the payment is made, there is a special relationship (within the meaning of Article 4(2) of the Directive) between the company in Condition 1 of section 98 and the company in Condition 2 of that section or between one of those companies and another person, and

(c) owing to the special relationship, the amount of the interest or royalty paid exceeds the amount ("the arm's length amount") which would have been paid in the absence of the relationship,

this Chapter, apart from this section, has effect in relation to only so much of the payment as does not exceed the arm's length amount (which may be nil).

(2) The following provisions of the Taxes Act 1988 apply in relation to subsection (1) as if that subsection were a special relationship provision within the meaning of those provisions—

(a) in the case of a payment of interest, subsections (2) to (4) of section 808A (interest: special relationship), and

(b) in the case of a payment of a royalty, subsections (2) to (7) and (9) of section 808B (royalties: special relationship).

(3) In those provisions of the Taxes Act 1988 as applied in relation to subsection (1), expressions also used in this section or this Chapter have the same meaning as in this section or this Chapter.

(4) This section does not affect any relief which may be allowed under any arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories).

104 Anti-avoidance

(1) Section 98 does not apply in relation to a payment of interest or of a royalty if—

(a) in the case of a payment of interest, Condition A is satisfied, or

(b) in the case of a payment of a royalty, Condition B is satisfied.

(2) Condition A is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Chapter by means of that creation or assignment.

(3) Condition B is satisfied if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalty is paid to take advantage of this Chapter by means of that creation or assignment.

Supplementary

105 Consequential amendments

(1) Section 98 of the Taxes Management Act 1970 (c. 9) (special returns etc) is amended as follows.

(2) In subsection (4A)(b), after "(4D)" insert ", (4DA)".

(3) After subsection (4D) insert—

"(4DA) A payment is within this subsection if—

(a) it is a payment to which section 349(1) of the principal Act (requirement to deduct tax) applies,

(b) a company, purporting to rely on section 101 of the Finance Act 2004 (payment of royalties without deduction at source), makes the payment without deduction of tax under section 349(1) of the principal Act, and

(c) at the time the payment is made section 98 of the Finance Act 2004 does not apply to the payment and the company—

(i) does not believe that that section does so apply, or

(ii) if it does so believe, cannot reasonably do so.".

(4) In section 18 of the Taxes Act 1988 (Schedule D) after subsection (5) insert—

"(6) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).".

(5) In section 349 of the Taxes Act 1988 (certain payments to be made subject to deduction of income tax) after subsection (6) insert—

"(7) This section is subject to Chapter 6 of Part 3 of the Finance Act 2004 (exemption from income tax for certain interest and royalty payments).".

106 Transitional provision

(1) This section has effect only in relation to—

(a) payments of interest made on or after 1st January 2004 but before the coming into force of the first regulations under section 100, and

(b) payments of royalties made on or after 1st January 2004 but before the passing of this Act.

(2) Anything done by a person—

(a) before 8th April 2004, and

(b) in reliance on, and in accordance with, a provision of the published draft Chapter or the published draft regulations,

is to be treated as if it had been done under, and in accordance with, the corresponding provision of this Chapter or of regulations under section 100.

(3) Anything done by a person—

(a) on or after 8th April 2004 but before the passing of this Act, and

(b) in reliance on, and in accordance with, a provision of the published Chapter or the published regulations,

is to be treated as if it had been done under, and in accordance with, the corresponding provision of this Chapter or of regulations under section 100.

(4) During the period between the passing of this Act and the coming into force of the first regulations under section 100, the published regulations shall have effect as if they were regulations under that section.

(5) In this section—

"the published draft Chapter" means the draft version of this Chapter published by the Board on 10th December 2003;

"the published draft regulations" means the draft version of regulations under section 100 published by the Board on 10th December 2003;

"the published Chapter" means the version of this Chapter appearing in the Finance Bill as introduced in the House of Commons and published on 8th April 2004;

"the published regulations" means the draft version of regulations under section 100 published by the Board on 8th April 2004.

CHAPTER 7

SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX

Introductory

107 Introductory

(1) This Chapter has effect for the purpose of giving relief from double taxation in respect of special withholding tax.

(2) Such relief is given—

(a) by set-off against income tax or capital gains tax;

(b) to the extent that it cannot be so set off, by repayment.

(3) "Special withholding tax" means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 11 of Council Directive 2003/48/ EC of 3rd June 2003 on taxation of savings income in the form of interest payments ("the Savings Directive"), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(4) "International arrangements", in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income under—

(a) the law of the United Kingdom, or

(b) that law and the law of that territory.

(5) For the purposes of Part 18 of the Taxes Act 1988 (double taxation relief)—

(a) relief from double taxation in respect of special withholding tax is not to be available under Chapters 1 and 2 of that Part; and

(b) special withholding tax is not to be regarded as foreign tax for the purposes of Chapter 2 of that Part.

(6) Sections 113 and 114 also make provision for implementing—

(a) Article 13(2) of the Savings Directive (provision of certificate to avoid levy of special withholding tax), and

(b) any corresponding provision of international arrangements.

(7) In this Chapter—

"double taxation arrangements" means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories);

"international arrangements" has the meaning given by subsection (4);

"the Savings Directive" has the meaning given by subsection (3)(a);

"savings income"—

(a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression "interest payment" has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and

(b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned;

"special withholding tax" has the meaning given by subsection (3).

(8) In the application of this Chapter in relation to capital gains tax, expressions used in this Chapter and in the Taxation of Chargeable Gains Act 1992 (c. 12) have the same meaning in this Chapter as in that Act.

Credit etc for special withholding tax

108 Income tax credit etc for special withholding tax

(1) This section applies where—

(a) a person is chargeable to income tax for a year of assessment in respect of a payment of savings income or would be so chargeable but for any exemption or relief which has effect in respect of that payment,

(b) special withholding tax is levied in respect of the payment, and

(c) the person is resident in the United Kingdom for that year of assessment.

(2) On the making of a claim, income tax ("the deemed tax") of an amount equal to the amount of the special withholding tax levied is to be treated as having been—

(a) paid by or on behalf of the person for that year of assessment, and

(b) deducted at source for that year of assessment for the purposes of the provisions in subsection (3).

(3) The provisions are—

section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);

section 8 of that Act (personal return);

section 8A of that Act (trustee's return);

section 9 of that Act (returns to include self-assessment);

section 59A of that Act (payments on account of income tax);

section 59B of that Act (payments of income tax and capital gains tax);

section 824(3) of the Taxes Act 1988 (repayment supplements: determination of relevant time).

(4) Where the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—

(a) the excess is to be set against any capital gains tax for which he is liable for the year of assessment, and

(b) he is entitled to a repayment of income tax in respect of any remaining balance of that excess.

(5) But subsection (2) does not apply in relation to an amount of special withholding tax levied if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) the person was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

109 Capital gains tax credit etc for special withholding tax

(1) This section applies where—

(a) a person makes a disposal of assets in a year of assessment,

(b) on the assumption that a chargeable gain were to accrue on the disposal,—

(i) it would accrue to the person, and

(ii) he would be chargeable to capital gains tax in respect of it,

(c) the consideration for the disposal consists of or includes an amount of savings income,

(d) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal, and

(e) the person is resident in the United Kingdom for that year of assessment.

(2) For the purposes of subsection (1)(b)(ii), there are to be disregarded—

(a) any deductions that fall to be made from the total amount referred to in section 2(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deductions for allowable losses),

(b) section 3 of that Act (annual exempt amount), and

(c) section 77(1) of that Act (settlor with interest in settlement: trustees not to be chargeable in certain circumstances).

(3) On the making of a claim, capital gains tax ("the deemed tax") of an amount equal to the amount of the special withholding tax levied is to be treated as having been paid—

(a) by or on behalf of the person for that year of assessment, and

(b) for the purposes of section 283(2) of the Taxation of Chargeable Gains Act 1992 (repayment supplements: determination of relevant time), on 31st January next following that year of assessment.

(4) For the purposes of the application of the following provisions in relation to the person for that year of assessment, references in those provisions to income tax deducted at source for that year of assessment are to be taken to include the amount of the deemed tax—

section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);

section 8 of that Act (personal return);

section 8A of that Act (trustee's return);

section 9 of that Act (returns to include self-assessment);

section 59B of that Act (payments of income tax and capital gains tax).

(5) Where the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—

(a) the excess is to be set against any income tax for which he is liable for the year of assessment, and

(b) he is entitled to a repayment of capital gains tax in respect of any remaining balance of that excess.

(6) But subsection (3) does not apply in relation to an amount of special withholding tax levied if—

(a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and

(b) he was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.

(7) To the extent that section 108 of this Act applies in relation to an amount of special withholding tax levied (or would so apply on the making of a claim), this section does not apply in relation to that amount.

110 Credit under Part 18 of Taxes Act 1988 to be allowed first

(1) Any credit for foreign tax that falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) against income tax or capital gains tax is to be so allowed before effect is given to section 108 or 109.

(2) In this section "foreign tax" has the same meaning as in Chapter 2 of Part 18 of the Taxes Act 1988 (see section 792(1) of that Act).

Computation of income etc

111 Computation of income etc subject to special withholding tax only

(1) This section applies where—

(a) a person is chargeable to income tax in respect of a payment of savings income, or

(b) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income,

and the conditions in subsections (2) and (3) are satisfied.

(2) The first condition is that special withholding tax is levied in respect of—

(a) the payment of savings income, or

(b) the whole or any part of the consideration for the disposal.

(3) The second condition is that no credit for foreign tax in respect of the savings income or the chargeable gain in question falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) (so that section 795(1) and (2) of that Act, which make similar provision to subsections (4) to (6) of this section, do not apply).

(4) If income tax is payable by reference to the amount of the savings income received in the United Kingdom, the amount received is to be treated for the purposes of income tax as increased by the amount of special withholding tax levied in respect of it.

(5) If capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom, the amount received is to be treated for the purposes of capital gains tax as increased by an amount equal to—

$$SWT \times \frac{GUK}{G \quad SWT}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(6) If neither subsection (4) nor subsection (5) applies, then, in computing—

(a) the amount of the income or gain in question for the purposes of income tax, or

(b) the amount of any chargeable gain for the purposes of capital gains tax,

no deduction is to be made for special withholding tax (whether in respect of the same or any other income or gain or, as the case may be, chargeable gains).

(7) In this section references to special withholding tax are to special withholding tax in respect of which a claim has been made under this Chapter.

112 Computation of income etc subject to foreign tax and special withholding tax

(1) Section 795 of the Taxes Act 1988 (double taxation relief: computation of income subject to foreign tax) is amended as follows.

(2) In subsection (1) (remittance basis: grossing up) after "increased by" insert "— (a)" and at the end insert—

", and

(b) the amount of any special withholding tax levied in respect of the income.".

(3) In subsection (2)(a) (other cases: no deduction for foreign tax) after "foreign tax" insert "or special withholding tax".

(4) After subsection (4) insert—

"(5) In this section—

(a) "special withholding tax" has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and

(b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.".

(5) Section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12) (which applies Chapters 1 and 2 of Part 18 of the Taxes Act 1988 in relation to capital gains tax) is amended as follows.

(6) After subsection (1) insert—

"(1A) Subsection (1B) below applies where—

(a) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income, and

(b) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal.

(1B) In section 795 of the Taxes Act, as applied by this section, for the reference in subsection (1)(b) to the amount of any special withholding tax levied in

respect of the income, there shall be substituted a reference to an amount equal to—

$$SWT \times \frac{GUK}{G - SWT}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

(1C) In subsections (1A) and (1B) above "savings income" and "special withholding tax" have the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107 of that Act); and references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.".

Certificates to avoid levy of special withholding tax

113 Issue of certificate

(1) This section has effect for enabling the Inland Revenue to issue certificates to be used under the law of a territory outside the United Kingdom implementing—

(a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to his paying agent certificate drawn up by competent authority of his member State of residence for tax purposes), or

(b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).

(2) If, on the written application of a person, the Inland Revenue are satisfied that the applicant has provided them with—

(a) the required information, and

(b) such documents as they may require to verify that information,

the Inland Revenue must issue a certificate to the applicant.

(3) "The required information" means—

(a) the applicant's name and address,

(b) his National Insurance number or, if he does not have one, his date, town and country of birth,

(c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to such payments,

(d) the name and address of the paying agent who is to make such payments of savings income to, or to secure such payments of savings income for, the applicant, and

(e) the period, not exceeding three years, for which the applicant would like the certificate to be valid.

(4) A certificate under this section must be in writing and must state—

(a) the information mentioned in subsection (3)(a) to (d), and

(b) the period of validity of the certificate (which must not exceed three years).

(5) A certificate under this section must be issued no later than the end of the period of two months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).

(6) In this section and section 114 "the Inland Revenue" means any officer of the Commissioners of Inland Revenue.

(7) Where the requirements of—

(a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and

(b) any corresponding provision of any international arrangements,

differ to any extent, subsections (3) to (5) shall have effect, in their application in relation to the international arrangements concerned, with such modifications as may be required by virtue of those arrangements.

114 Refusal to issue certificate and appeal against refusal

(1) This section applies if, on an application for a certificate under section 113, the Inland Revenue are not satisfied that the applicant has provided them with the information and documents required by or under subsection (2) of that section.

(2) The Inland Revenue must give written notice ("the refusal notice") to the applicant of their refusal to issue a certificate.

(3) The refusal notice must specify the reasons for the refusal.

(4) The applicant may by written notice ("the appeal notice") appeal to the Special Commissioners against the refusal.

(5) The appeal notice must be given to the Inland Revenue within 30 days of the date of the refusal notice.

(6) Part 5 of the Taxes Management Act 1970 (c. 9) (appeals and other proceedings) shall apply in relation to an appeal under this section.

(7) On the appeal, the Special Commissioners may—

(a) confirm the refusal notice, or

(b) quash it and require the Inland Revenue to issue a certificate.

SupplementaryM

115 Supplementary

(1) In section 792 of the Taxes Act 1988 (double taxation relief: interpretation of the credit code) in subsection (1), in the definition of "foreign tax", at the end insert "(other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)".

(2) In section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) in subsection (2), at the end insert "and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)".

(3) In section 278 of the Taxation of Chargeable Gains Act 1992 (c. 12) (allowance for foreign tax) in subsection (1), after "section 277" insert "and to section 111 of the Finance Act 2004 (computation of chargeable gains subject to special withholding tax)".

(4) Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) (gross revenues to be paid to Exchequer) is to be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of amounts repaid in accordance with this Chapter before causing the gross revenues of their department to be paid to the account mentioned in that section.

CHAPTER 8

CHARGEABLE GAINS

116 Restriction of gifts relief etc

Schedule 21 (which makes provision for relief under section 165 or 260 of the Taxation of Chargeable Gains Act 1992 (c. 12) not to be available on certain transfers to settlor-interested settlements etc or on transfers of shares etc to companies, and makes minor amendments in sections 79 and 281 of that Act) has effect.

117 Private residence relief

Schedule 22 (which makes provision about private residence relief) has effect.

118 Authorised unit trusts: treatment of umbrella schemes

(1) The Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In section 99(2) (application of Act to unit trust schemes: definitions)—

(a) in the opening words, after "Subject to subsection (3)" insert "and section 99A"; and

(b) for paragraph (b) substitute—

"(aa) "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme;

(b) "authorised unit trust" means, as respects an accounting period, a unit trust scheme in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force during the whole or part of that period."

(3) After that section insert—

"**99A Authorised unit trusts: treatment of umbrella schemes**

(1) In this section an "umbrella scheme" means an authorised unit trust—

(a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them, and

(b) under which the participants are entitled to exchange rights in one pool for rights in another,

and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Act (except subsection (1))—

(a) each of the parts of an umbrella scheme shall be regarded as an authorised unit trust, and

(b) the scheme as a whole shall not be regarded as an authorised unit trust or as any other form of collective investment scheme.

(3) In this Act, in relation to a part of an umbrella scheme, any reference to a unit holder is to a person for the time being having rights in the separate pool to which the part of the umbrella scheme relates.

(4) Nothing in subsections (2) or (3) shall prevent—

(a) gains accruing to an umbrella scheme being regarded as gains accruing to an authorised unit trust for the purposes of section 100(1) (exemption for authorised unit trusts etc);

(b) a transfer of business to an umbrella scheme being regarded as a transfer to an authorised unit trust for the purposes of section 139(4) (exclusion of transfers to authorised unit trusts etc);

(c) a disposal by a unit holder of units in an umbrella scheme being regarded as a disposal by him of units in an authorised unit trust for the purposes of section 271(1)(j) (exemption for disposal of units in an authorised unit trust which is also an approved personal pension scheme etc).".

(4) In section 288 (interpretation)—

(a) in subsection (1), in the definition of "collective investment scheme", at the end insert "(subject to section 99A)";

(b) in the table in subsection (8) (index of general definitions)—

(i) in the first column after "Unit trust scheme" insert "and "unit holder"";

(ii) in the second column for "s 99" substitute "ss 99 and 99A".

(5) The amendments made by this section have effect in relation to years of assessment and accounting periods beginning on or after 1st April 2004.

CHAPTER 9

AVOIDANCE INVOLVING LOSS RELIEF OR PARTNERSHIP

Individuals benefited by film relief

119 Individuals benefited by film relief

(1) This section applies if—

(a) an individual has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a film-related loss sustained by him in a trade carried on solely or in partnership ("a relevant claim");

(b) there is a disposal on or after 10 December 2003 of a right of the individual to profits arising from the trade (a "relevant disposal"); and

(c) an exit event occurs.

(2) An "exit event" occurs when any of the following happens—

(a) on or after 10 December 2003 the individual receives any non-taxable consideration for a relevant disposal (whether or not he also receives any taxable consideration for it);

(b) on or after 10 December 2003 the losses claimed become greater than the individual's capital contribution to the trade (whether because of a claim or a decrease in that capital contribution);

(c) on or after 10 December 2003 there is an increase in the amount (if any) by which the losses claimed exceed the individual's capital contribution to the trade.

(3) A "chargeable event" occurs whenever—

(a) the individual makes a relevant claim, if by the time the claim has been made a relevant disposal and an exit event have occurred; or

(b) a relevant disposal occurs, if by the time it has occurred an exit event has occurred and the individual has made a relevant claim; or

(c) an exit event occurs, if by the time it has occurred a relevant disposal has occurred and the individual has made a relevant claim.

(4) Where a chargeable event occurs, the individual shall be treated as receiving at the time of that event annual profits or gains which are—

(a) of an amount equal to the chargeable amount; and

(b) chargeable to income tax under Case VI of Schedule D.

(5) The "chargeable amount" is an amount equal to the sum of the following (computed as at the time immediately after the chargeable event)—

(a) so much of the total amount or value of any consideration received by the individual for the relevant disposal (or, if there has been more than one, for relevant disposals) as is non-taxable; and

(b) the amount (if any) by which the losses claimed exceed the individual's capital contribution to the trade;

but this is subject to section 122(2).

(6) For the purposes of subsection (1)(a) it is immaterial when the claim is made.

(7) It is immaterial whether the trade is still being carried on by the individual (or by anyone else) when a chargeable event occurs.

120 "Disposal of a right of the individual to profits arising from the trade"

(1) The reference in section 119(1)(b) to a disposal of a right of the individual to profits arising from the trade includes, in particular—

(a) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) where the right arises from the trade;

(b) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right arising from the trade;

(c) a change in the individual's entitlement to any profits arising from the trade such that his share of the profits is reduced or extinguished;

(d) a change in the individual's entitlement to any losses arising from the trade such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;

(e) the disposal, giving up or loss of the individual's interest in a partnership that carries on the trade, including the dissolution of the partnership.

(2) It is immaterial for the purposes of subsection (1)(a) whether the right is disposed of alone or as part of a larger disposal (and the references here to disposal include giving up or loss).

(3) If there is an agreement under which the individual is entitled—

(a) to a particular share of any profits or losses arising from the trade in a period, and

(b) to a different share of any profits or losses arising from the trade in a succeeding period ("the later period"),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(c) and (d) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a "share" of profits or losses includes a nil share.

121 "The losses claimed" and "the individual's capital contribution to the trade"

(1) In section 119 "the losses claimed" means the total amount of any film-related losses sustained by the individual in the trade in any years of assessment, to the extent that they are losses—

(a) in respect of which the individual has (at any time) claimed relief under section 380 or 381 of the Taxes Act 1988; or

(b) that he has (at any time) claimed as allowable losses under section 72 of the Finance Act 1991 (c. 31).

(2) In section 119 "the individual's capital contribution to the trade" means (subject to section 122(1)) the amount that the individual has contributed to the trade as capital, less so much of that amount (if any) as—

(a) he has directly or indirectly drawn out or received back;

(b) he is entitled so to draw out or receive back;

(c) he has had directly or indirectly reimbursed to him by any person;

(d) he is entitled to require any person so to reimburse to him.

(3) In relation to a member of a limited liability partnership, the reference in subsection (2) to the amount contributed to the trade as capital shall be read as a reference to the amount contributed to the limited liability partnership as capital.

(4) In subsection (2) references to reimbursement include reimbursement effected by discharging or assuming all or part of a liability of the individual.

(5) Subsection (4) shall not be taken to limit what is to be treated for the purposes of subsection (2) as the receipt back or reimbursement of an amount.

(6) An amount drawn out or received back that would otherwise fall within subsection (2)(a), or an entitlement that would otherwise fall within subsection (2)(b), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

122 Computing the chargeable amount

(1) Where a chargeable event occurs, anything treated for the purposes of section 119(5)(a) as consideration received by the individual for a relevant disposal shall not also be deducted under section 121(2)(a) to (d) in computing the individual's capital contribution to the trade for the purposes of section 119(5)(b).

(2) Where successive chargeable events occur as respects the individual and the trade—

(a) any consideration that is taken into account under section 119(5)(a) in computing the chargeable amount on an earlier chargeable event shall not be included again in computing the chargeable amount on a later chargeable event; and

(b) in computing the chargeable amount on a later chargeable event, any amount found under section 119(5)(b) shall be reduced (but not below nil) by the total of any amounts found under section 119(5)(b) (read with this paragraph) on earlier chargeable events.

(3) In computing the chargeable amount in any case, any consideration given to the individual for a relevant disposal shall be treated as if it had been received free of any deduction actually made from it in consideration of any person's agreeing to or facilitating a relevant disposal or exit event.

123 "Film-related losses" and "non-taxable consideration"

(1) For the purposes of sections 119 and 121 a loss is a "film-related loss" if the computation of profits or losses that it results from is made in accordance with any of the following—

sections 40A to 40C of the Finance (No. 2) Act 1992 (c. 48);

sections 41 to 43 of that Act;

section 48 of the Finance (No. 2) Act 1997 (c. 58).

(2) References in section 119 to "non-taxable" consideration are to consideration that (apart from section 119) is not chargeable to income tax; and the reference to "taxable" consideration is to be read accordingly.

Individuals in partnership: restriction of relief

124 Restriction of relief: non-active partners

(1) After section 118ZD of the Taxes Act 1988 there is inserted—

"Non-active general partners and non-active members of limited liability partnerships

118ZE Restriction on relief for non-active partners

(1) This section applies to an amount which may be given to an individual under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment.

(2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—

(a) the amount given, or

(b) (as the case may be) the aggregate amount,

does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.

(3) A "qualifying year of assessment" means a year of assessment—

(a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,

(b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),

(c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(d) the basis period for which ends on or after 10 February 2004, and

(e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.

(4) In this section—

(a) a "general partner" means any partner who is not a limited partner, and

(b) "limited partner" has the meaning given by section 117(2),

and in paragraph (a) "any partner" does not include a member of a limited liability partnership.

(5) In this section and sections 118ZF to 118ZK, "basis period" means (subject to subsection (6)) the basis period given by sections 60 to 63 as applied by section 111(4) and (5).

(6) The basis period for a year of assessment to which section 61(1) applies is to be taken for the purposes of this section and sections 118ZF to 118ZK to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

(7) In subsection (1) "a trade" does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd's underwriters).

(8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

118ZF Meaning of "the aggregate amount"

(1) In section 118ZE(2) "the aggregate amount" means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section 353, 380 or 381 in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (2).

(2) A year of assessment falls within this subsection if—

(a) it is a qualifying year of assessment within the meaning of section 118ZE, or

(b) it is a year of assessment—

(i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and

(ii) the basis period for which ends on or after 10 February 2004.

118ZG "The individual's contribution to the trade"

(1) For the purposes of section 118ZE(2), the individual's contribution to the trade at any time ("the relevant time") is the sum of—

(a) the amount subscribed by him,

(b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money's worth, and

(c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.

(2) For the purposes of subsection (1)(a) the "amount subscribed" by an individual is the sum of—

(a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and

(b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—

(i) the pre-announcement allowance (within the meaning given by section 118ZJ),

(ii) the aggregate of any amounts given to him at any time under section 353, 380 or 381 in respect of a loss sustained by him in a trade, or of interest paid by him in connection with carrying it on, in a year of assessment falling within subsection (3), and

(iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).

(3) A year of assessment falls within this subsection if—

(a) it does not fall within section 118ZE(3)(d), and

(b) it is either—

(i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or

(ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).

(4) The individual's "withdrawn capital" is so much, if any, of the amount that he has contributed to the trade as capital as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

(6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

118ZH "A significant amount of time"

(1) For the purposes of section 118ZE the individual shall be treated as having "devoted a significant amount of time to the trade" in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date, and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment under Case VI of Schedule D.

118ZI Carry forward of unrelieved losses of non-active partners

(1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—

(a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and

(b) any of his total restricted loss remains outstanding.

(2) His "total restricted loss" means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.

(3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—

(a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or

(b) (if no loss is sustained) a loss of that amount were so sustained.

(4) To ascertain whether any (and, if so, how much) of the individual's total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

(a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and

(b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).

(5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—

(a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and

(b) any loss deemed by subsection (3)(b) to have been so sustained,

shall be treated as having been sustained in a qualifying year of assessment.

(6) Subsection (7) applies where the subsequent year of assessment—

(a) is one in which the trade is not carried on in partnership by the individual, but

(b) is one in which he contributes to the assets of the partnership on its winding up.

(7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section "qualifying year of assessment" has the meaning given by section 118ZE.

18ZJ Commencement: the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 ("the first restricted year").

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and "the first restricted year" means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from "only to the extent that" there were substituted "only to the extent that the total amount given under section 353, 380 and 381 in respect of losses sustained by him in the trade, and interest paid by him in connection with carrying it on, in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance."

(4) The "pre-announcement allowance" is the sum of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, and

(b) any interest paid by him in that period in connection with the carrying on of the trade.

(5) The "post-announcement allowance" is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, and

(b) any interest paid by him in that period in connection with the carrying on of the trade,

as does not exceed the individual's contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual's share of the losses shall be determined according to his interest in the partnership during that period.

(7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—

(a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and

(b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.

(8) If the individual had an interest in the partnership at any time that falls within—

(a) the basis period for the first restricted year, and

(b) the period beginning with 10 February 2004 and ending with 25 March 2004,

he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

118ZK Transitional provision for years after the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.

(2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

(a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or

(b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 where the expenditure to which the deduction relates was incurred before 10 February 2004.

(3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.

(4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.

(5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 shall be determined on such basis as is just and reasonable.

(6) In this section "the first restricted year" and "the pre-announcement allowance" have the meanings given by section 118ZJ."

(2) In section 117(2) of the Taxes Act 1988, in paragraph (a) of the definition of "the aggregate amount", after "a relevant year of assessment" there is inserted "or a qualifying year of assessment within the meaning of section 118ZE".

(3) Section 118ZB of the Taxes Act 1988 (restriction on relief: members of limited liability partnerships) is renumbered as subsection (1) of that section and after that provision there is added—

"(2) However, section 117 does not apply in relation to a loss sustained by an individual in a trade, or interest paid by him in connection with the carrying on of a trade, in a qualifying year of assessment within the meaning of section 118ZE."

(4) In section 118ZD of the Taxes Act 1988 (carry forward of unrelieved losses by members of limited liability partnerships), in subsection (2), for "and 118" there is substituted ", 118 and 118ZE".

125 Partnerships exploiting films

After section 118ZK of the Taxes Act 1988 (inserted by section 124) there is inserted—

"Partnerships exploiting films

118ZL Partnerships exploiting films

(1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss ("the loss in question") sustained by him—

(a) in a trade consisting of or including the exploitation of films, and

(b) in an affected year of assessment,

none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

(2) An "affected year of assessment" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(b) a year of assessment in which he did not devote a significant amount of time to the trade, and

(c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.

(3) For the purposes of subsection (2)(c)—

(a) "a relevant agreement" means—

(i) an agreement that was made with a view to the individual's carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or

(ii) an agreement related to an agreement falling within sub-paragraph (i),

(b) an agreement "guarantees" the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and

(c) it is immaterial when the amount of income would be received under the agreement.

(4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.

(5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

(6) Expenditure is exempt expenditure for the purposes of this section if it is—

(a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or

(b) expenditure that, for the purposes of the computation required by section 111(2), was deducted under section 41 or 42 of the Finance (No. 2) Act 1992, or

(c) incidental expenditure that, although deductible apart from section 41 or 42 of that Act, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under either of those sections.

(7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

118ZM Partnerships exploiting films: supplementary

(1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

(2) Section 118ZH (meaning of "a significant amount of time" etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.

(3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) The reference in section 118ZL(6) to the acquisition of a film is a reference to the acquisition of the master negative or any master tape or master disc of the film; and this subsection is to be construed in accordance with section 43(1) and (2)(b) of the Finance (No. 2) Act 1992.

(5) In section 118ZL(6) "incidental expenditure" means expenditure on management, administration or obtaining finance.

(6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.

(7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.

(8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3)."

Individuals in partnership: exit charge

126 Losses derived from exploiting licence: introductory

(1) Section 127 (charge to income tax) applies in relation to an individual who carries on or has carried on a trade in partnership if—

(a) there is a disposal on or after 10 February 2004 of—

(i) any licence acquired in carrying on the trade; or

(ii) any rights to income under any agreement that is related to or contains such a licence;

(b) the individual receives any non-taxable consideration for the disposal ("relevant consideration"); and

(c) he has made a claim under section 380 or 381 of the Taxes Act 1988 in respect of a licence-related loss sustained in the trade in a qualifying year ("a relevant claim").

(2) A "licence-related loss" means a loss that derives to any extent from expenditure incurred in the trade in exploiting the licence.

(3) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.

(4) A "qualifying year" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment; and

(b) a year of assessment in which he did not devote a significant amount of time to the trade (within the meaning given by section 130).

(5) The reference in subsection (1)(b) to "non-taxable" consideration is to consideration—

(a) that (apart from section 127) is not chargeable to income tax; and

(b) whose receipt is not an exit event for the purposes of section 119;

and it is immaterial for the purposes of subsection (1)(b) whether the non-taxable consideration is the only consideration received by the individual for the disposal.

(6) For the purposes of this section and sections 127 to 129, an agreement is related to a licence if they are entered into in pursuance of the same arrangement (regardless of the date on which either is entered into).

(7) For the purposes of this section and sections 127 to 129 an agreement, or part of an agreement, that imposes an obligation to do a thing (rather than merely conferring authority to do it) is not for that reason to be regarded as not being a licence; and references to "exploiting" a licence shall be construed accordingly.

127 Charge to income tax

(1) A chargeable event occurs whenever, on or after 10 February 2004, an individual who carries on or has carried on a trade in partnership—

(a) receives relevant consideration, if by the time he has received it he has (at any time) made a relevant claim; or

(b) makes a relevant claim, if by the time he has made it he has received relevant consideration.

(2) Where, as respects an individual, one or more chargeable events occurs in a year of assessment in relation to a licence ("the licence in question"), so much of the total consideration as does not exceed the chargeable amount shall be treated as—

(a) annual profits or gains of the individual of that year of assessment; and

(b) chargeable to income tax under Case VI of Schedule D.

(3) The "total consideration" means the total amount or value of the relevant consideration that by the end of that year of assessment has been received by the individual (whether or not in that year of assessment).

(4) To find the chargeable amount—

(a) take so much of the total consideration as does not exceed the net-licence related loss; and

(b) reduce the amount found under paragraph (a) (but not below nil) by the amount of any relevant consideration that by reason of this section has been treated as annual profits or gains of previous years of assessment.

(5) The net licence-related loss is the amount, computed as at the end of the year of assessment in which the chargeable event occurs, by which A exceeds B, where—

A is the total of the individual's claimed licence-related losses for qualifying years; and

B is the total of his licence-related profits for any years of assessment.

(6) In subsections (3) and (4), the references to relevant consideration are to relevant consideration received on or after 10 February 2004 and relating to the licence in question (and where relevant consideration is received for a disposal of rights to income under any agreement related to or containing a licence, the consideration shall be regarded for the purposes of this section as relating to the licence).

(7) In this section "relevant consideration", "relevant claim" and "qualifying year" have the meanings given by section 126.

128 Definitions for purposes of section 127

(1) This section applies for the purposes of section 127(5).

(2) The individual's "claimed licence-related loss" for a qualifying year is so much of the loss (if any) sustained by him in the trade in that year as derives from expenditure incurred in the trade in exploiting the licence in question and is loss—

(a) in respect of which he has claimed relief under section 380 or 381 of the Taxes Act 1988; or

(b) that he has claimed as an allowable loss under section 72 of the Finance Act 1991 (c. 31).

(3) For the purposes of subsection (2) the part of a loss that falls within that subsection shall be determined on such basis as is just and reasonable.

(4) In relation to an individual who carried on the trade at any time before 26 March 2004, the reference in subsection (2) to expenditure does not include expenditure incurred before 10 February 2004.

(5) As espects any year of assessment, the individual's "licence-related profit" is such part of his profit (if any) from the trade for that year of assessment as derives from income arising from any agreement that is related to or contains the licence in question.

(6) The part of a profit that derives from such income shall be determined on such basis as is just and reasonable.

129 Disposals to which section 126 applies

(1) The reference in section 126(1)(a) to a disposal of such a licence or rights as are there mentioned includes, in particular—

(a) the revocation of the licence;

(b) the disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right under the licence;

(c) any disposal, giving up or loss by the individual, or by a partnership of which he is a member, of any right to any income (or any part of any income) under an agreement that is related to or contains the licence ("a licence-related agreement");

(d) any default in the payment of income to which the individual, or a partnership of which he is a member, has a right under a licence-related agreement;

(e) a change in the individual's entitlement to any profits deriving to any extent from such income, such that his share of the profits is reduced or extinguished;

(f) a change in the individual's entitlement to any losses deriving to any extent from expenditure incurred in exploiting the licence, such that he becomes entitled to a share, or a greater share, of the losses without becoming entitled to a corresponding share of profits;

(g) the disposal, giving up or loss of the individual's interest in a partnership that has the licence or a right to income under a licence-related agreement, including the dissolution of the partnership.

(2) It is immaterial for the purposes of section 126(1)(a) and subsection (1)(b) and (c) whether the licence or right is disposed of alone or as part of a larger disposal (and the references here to disposal of a right include giving up or loss).

(3) If there is an agreement under which the individual is entitled—

(a) to a particular share of any profits or losses arising in a period, and

(b) to a different share of any profits or losses arising in a succeeding period ("the later period"),

his entitlement to the profits or losses arising in the later period shall be treated for the purposes of subsection (1)(e) and (f) as changing at the beginning of the later period; and in paragraphs (a) and (b) of this subsection a "share" of profits or losses includes a nil share.

130 "A significant amount of time"

(1) For the purposes of section 126(4)(b) the individual shall be treated as having "devoted a significant amount of time to the trade" in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date; and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) In this section "basis period" means (subject to subsection (4)) the basis period given by sections 60 to 63 of the Taxes Act 1988 as applied by section 111(4) and (5) of that Act.

(4) The basis period for a year of assessment to which section 61(1) of that Act applies is to be taken for the purposes of this section to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

Companies in partnership

131 Companies in partnership

(1) This section applies if—

(a) on or after 17 March 2004, a company that is or has been a member of a partnership—

(i) directly or indirectly draws out or receives back any capital from the partnership; or

(ii) receives consideration for a disposal on or after 17 March 2004 of all or any of its interest in the partnership;

(b) as at the relevant time, the sum of—

(i) the total amount of any relevant withdrawals, and

(ii) the total amount or value of any relevant consideration,

exceeds the company's contribution to the partnership;

(c) that excess (or any part of it) results directly or indirectly from an arrangement under which any relevant profit was shared in such a way that the company was not allocated all or part of its due share of the profit; and

(d) if the company's due shares of relevant profits had been allocated to the company, some or all of them would have been chargeable to corporation tax.

(2) For the purposes of this section—

(a) "the relevant time" means the time immediately after the capital is drawn out or received back or (as the case may be) the consideration is received;

(b) a "relevant withdrawal" means any capital that the company has, directly or indirectly, drawn out or received back from the partnership at any time on or after 17 March 2004;

(c) "relevant consideration" means consideration received by the company at any time on or after 17 March 2004 for the disposal on or after that date of all or any of its interest in the partnership;

(d) "the company's contribution to the partnership" means the sum of—

(i) the amount that it has contributed to the partnership as capital (excluding any amount originally contributed by a person from whom the company acquired an interest in the partnership); and

(ii) any amount paid by the company to such a person for such an interest;

(e) a "relevant profit" is the profit of the partnership computed for any period, but does not include any profit, or any part of a profit, that derives from income arising before 17th March 2004;

(f) the company's "due share" of any relevant profit is the share of the profit that the company would have been allocated if it had been allocated a share calculated by reference to the percentage of the total capital contributed (as defined by subsection (3)) that was contributed by it.

(3) To find "the total capital contributed" for the purposes of subsection (2)(f)—

(a) find, as respects the end of each day in the period for which the profit was computed, the total amount of capital that as at that time had been contributed to the partnership and had not been drawn out or received back;

(b) aggregate those amounts; and

(c) divide by the number of days in that period.

(4) Where this section applies, the company shall be treated as receiving, at the relevant time, annual profits or gains which are of an amount equal to the chargeable amount and chargeable to tax under Case VI of Schedule D.

(5) The chargeable amount is (subject to subsections (8) and (9)) so much of A as does not exceed B, where—

A is the amount by which, at the relevant time, the sum of the total amount of any relevant withdrawals and the total amount or value of any relevant consideration exceeds the company's contribution to the partnership; and

B is the amount by which, at the relevant time, the total amount of the company's due shares of relevant profits exceeds the total amount of the shares of relevant profits that were actually allocated to the company.

(6) If any non-income amount is taken into account in computing a relevant profit, then for the purposes of subsection (5) the amount of the company's due share of the relevant profit and the amount of the share of the relevant profit that was actually allocated to the company shall be taken to be what they would have been if all non-income amounts had been left out of account in computing the relevant profit.

(7) In subsection (6) a "non-income amount" means an amount that for the purposes of corporation tax would not be taken into account as income or in computing income.

(8) Subsection (9) applies if this section applies on more than one occasion in relation to the same company and partnership (whether because of two or more receipts by the company of consideration relating to the same disposal or for any other reason).

(9) On each occasion after the first, the amount found under subsection (5) shall be reduced (but not below nil) by the total of the chargeable amounts found (under that subsection read with this) on the previous occasions.

132 Companies in partnership: supplementary

(1) In section 131 and this section "capital" includes—

(a) anything accounted for as partners' capital, or partners' equity, in the accounts of the partnership drawn up in accordance with generally accepted accountancy practice; or

(b) if no such accounts are drawn up, anything that would be so accounted for if such accounts had been drawn up.

(2) Where a partnership is dissolved by reason of one of the partners acquiring the interests of the others, the remaining partner is to be treated for the purposes of section 131 as having drawn out his and the others' shares of capital from the partnership.

(3) For the purposes of section 131(2)(e), where a profit for a period derives partly from income arising before 17th March 2004, the part of the profit that derives from such income shall be determined on such basis as is just and reasonable.

(4) For the purposes of section 131(2)(f) the capital contributed by the company shall be taken to include amounts originally contributed as mentioned in section 131(2)(d)(i).

(5) In section 131(3) the reference to capital that had been contributed includes amounts purporting to be provided by way of loan where the loan—

(a) carries no interest; or

(b) carries interest at a rate less than that which might have been expected if the loan had been between independent persons dealing at arm's length.

(6) For the purposes of section 131 a partnership is to be treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after it.

133 Relationship with chargeable gains

(1) Subsection (3) below applies if—

(a) section 131 applies as a result of a receipt on or after 17 March 2004, by a company that is or has been a member of a partnership, of any consideration for a disposal on or after that date of all or any of its interest in the partnership ("the section 131 disposal");

(b) a chargeable gain accrues to the company on a relevant disposal; and

(c) the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of any allowable losses accruing to it on such disposals.

(2) References in this section to a "relevant disposal" are to any disposal of an asset that, alone or together with other disposals of assets, constitutes the section 131 disposal; and references in this subsection to a disposal of an asset are to be construed in accordance with the 1992 Act.

(3) Where this subsection applies—

(a) any chargeable gain accruing to the company on a relevant disposal must be excluded in computing, for the purposes of section 8(1) of the 1992 Act, the total amount of chargeable gains accruing to the company in the accounting period in which that gain accrued;

(b) the relevant net gain (defined by subsection (4) below) must be included in computing for those purposes the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred; and

(c) any allowable loss accruing to the company on a relevant disposal must be excluded in computing for the purposes of section 8(1) of the 1992 Act the amount of any allowable losses.

(4) To find "the relevant net gain" for the purposes of this section—

(a) take the amount by which the total amount of chargeable gains accruing to the company on relevant disposals exceeds the total amount of allowable losses accruing to it on such disposals; and

(b) reduce it (but not below nil) by an amount equal to the chargeable amount.

(5) Where section 131 applies as mentioned in subsection (1)(a) above, in computing any chargeable gain or allowable loss accruing to the company on a relevant disposal—

(a) neither the chargeable amount, nor any amount taken into account in computing it, shall be excluded by section 37(1) of the 1992 Act (exclusions from consideration); and

(b) an amount that has been taken into account in computing the chargeable amount shall not by reason of that fact be excluded by section 39(1) of that Act (exclusions from allowable deductions).

(6) If section 131 and this section apply more than once as a result of two or more receipts by a company of consideration relating to the same section 131 disposal—

(a) subsection (3)(b) above does not apply in relation to any of the receipts after the first; and

(b) in relation to the first receipt, the amount to be deducted under subsection (4)(b) above is an amount equal to the total of the chargeable amounts found in relation to the receipts.

(7) Subsection (8) below applies if subsection (3) above prevents an allowable loss that accrued to a company otherwise than on a relevant disposal from being deductible from a chargeable gain accruing to the company on a relevant disposal.

(8) That loss (to the extent that it has not been deducted from any other chargeable gain) shall instead be deductible from the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (1) above occurred.

(9) But if, in any case where subsection (3) above applies, there are one or more allowable losses—

(a) that are losses to which section 18(3) of the 1992 Act applies, and

(b) that accrued to the company otherwise than on a relevant disposal and are prevented by subsection (3) above from being deductible from a chargeable gain accruing to the company on a relevant disposal,

the total amount deducted under subsection (8) above in respect of those losses must not exceed the relevant net gain.

(10) In this section—

"the 1992 Act" means the Taxation of Chargeable Gains Act 1992 (c. 12);

"the chargeable amount" means the amount found under section 131 in relation to the receipt mentioned in subsection (1) above; and

references to chargeable gains, or allowable losses, accruing on disposals are to be construed in accordance with the 1992 Act.

CHAPTER 10

AVOIDANCE: MISCELLANEOUS

134 Finance leasebacks

(1) After section 228 of the Capital Allowances Act 2001 (c. 2) (sale and leaseback: election) insert—

"Finance leaseback: parties' income and profits

228A Application of sections 228B to 228E

(1) Sections 228B to 228E apply where—

(a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and

(b) section 222 (restriction of disposal value) applies.

(2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

228B Lessee's income or profits: deductions

(1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.

(2) The permitted maximum is the total of—

(a) finance charges shown in the accounts, and

(b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.

(3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).

(4) The calculation is—

$$\text{Current Book Value} \times \frac{\text{Original Consideration}}{\text{Original Book Value}}$$

where—

"Current Book Value" means the net book value of the leased plant or machinery immediately before the termination,

"Original Consideration" means the consideration payable to S for entering into the relevant transaction, and

"Original Book Value" means the net book value of the leased plant or machinery at the beginning of the leaseback.

228C Lessee's income or profits: termination of leaseback

(1) Subsection (2) applies where the leaseback terminates.

(2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).

(3) The calculation is—

$$\text{Net Consideration} \times \frac{\text{Current Book Value}}{\text{Original Book Value}}$$

where—

"Net Consideration" means—

(a) the consideration payable to S for entering into the relevant transaction, minus

(b) the restricted disposal value,

"Current Book Value" means the net book value of the leased plant or machinery immediately before the termination, and

"Original Book Value" means the net book value of the leased plant or machinery at the beginning of the leaseback.

(4) In this section "relevant qualifying activity" means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.

(5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.

(6) In subsection (5), "amounts received by way of refund" includes any amount that would be so received in respect of the lessee's interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

228D Lessor's income or profits

(1) This section applies in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.

(2) Where—

(a) an amount receivable in respect of the lessor's interest under the leaseback falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the leaseback,

that reduction shall be disregarded when taking the amount receivable into account.

(3) The amounts receivable in respect of the lessor's interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).

(4) The permitted threshold is the total of—

(a) gross earnings, and

(b) the allowable proportion of the capital repayment.

(5) In subsection (4)(a) "gross earnings" means the amount shown in the lessor's accounts in respect of the lessor's gross earnings under the leaseback.

(6) In subsection (4)(b) "allowable proportion of the capital repayment" means the amount obtained by this calculation—

$$\text{Restricted Disposal Value} \times \frac{\text{Investment Reduction For Period}}{\text{Net Investment}}$$

where—

"Investment Reduction For Period" means the amount shown in the lessor's accounts in respect of the reduction in net investment in the leaseback, and

"Net Investment" means the amount shown in the lessor's accounts as the lessor's net investment in the leaseback at the beginning of its term.

(7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

228E Lessor's income or profits: termination of leaseback

(1) Subsection (2) applies where—

(a) the leaseback terminates,

(b) the lessor disposes of the plant or machinery, and

(c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.

(2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

228F Lease and finance leaseback

(1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.

(2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.

(3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.

(4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.

(5) Plant or machinery is the subject of a lease and finance leaseback if—

(a) a person ("S") leases the plant or machinery to another ("B"),

(b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and

(c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.

(6) For the purposes of subsection (5), S leases the plant or machinery to B only if—

(a) S grants B rights over the plant or machinery,

(b) consideration is given for that grant, and

(c) S is not required to bring all of that consideration into account under this Part.

(7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.

(8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—

(a) references to the lessee are references to the person referred to as S in this section, and

(b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

228G Leaseback not accounted for as finance lease in accounts of lessee

(1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.

(2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection "relevant calculation" means the calculation of—

(a) the permitted maximum for the purposes of section 228B, or

(b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.

(3) Where an amount that falls to be used for the purposes of a relevant calculation—

(a) cannot be ascertained by reference to the lessee's accounts because the leaseback is not accounted for as a finance lease in those accounts, but

(b) can be ascertained by reference to the connected person's accounts for one or more periods,

that amount as ascertained by reference to the connected person's accounts shall be used for the purposes of the relevant calculation.

(4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.

(5) Sections 228B and 228C do not apply in relation to the leaseback.

(6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—

(a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or

(b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).

(7) For the purposes of this section the leaseback is accounted for as a finance lease in a person's accounts if—

(a) the leaseback falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or

(b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

228H Sections 228A to 228G: supplementary

(1) In sections 228A to 228G—

"lessee" does not include a person who is lessee by way of an assignment;

the "net book value" of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee's accounts, but—

(a) also having regard to depreciation up to the time in question, and

(b) disregarding any revaluation gains or losses and any impairments;

"restricted disposal value" means the disposal value under section 222;

"termination" in relation to a leaseback includes (except in section 228E)—

(a) the assignment of the lessee's interest,

(b) the making of any arrangements (apart from an assignment of the lessee's interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and

(c) a variation as a result of which the leaseback ceases to be a finance lease.

(2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—

(a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and

(b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.

(3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.

(4) In subsections (2) and (3) "correct accounts" means accounts drawn up in accordance with generally accepted accounting practice.

228J Plant or machinery subject to further operating lease

(1) This section applies where—

(a) plant or machinery is the subject of—

(i) a sale and finance leaseback, or

(ii) a lease and finance leaseback, and

(b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—

(i) the term of the lease begins on or after 18 May 2004;

(ii) S, or a person connected with S, is the lessee under the lease;

(iii) the lease is not accounted for as a finance lease in the accounts of the lessee.

(2) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.

(3) Subsections (4) and (5) apply in relation to the calculation of the lessor's income or profits for a period of account for the purpose of income tax or corporation tax.

(4) Where—

(a) an amount receivable in respect of the lessor's interest under the operating lease falls to be taken into account in that calculation, and

(b) that amount is reduced by an amount due to the lessee under the operating lease,

that reduction shall be disregarded when taking the amount receivable into account.

(5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).

(6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.

(7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—

(a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or

(b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

(8) In this section—

"lease and finance leaseback" has the meaning given in section 228F;

"lessee" means the lessee under the operating lease;

"lessor" means the lessor under the operating lease;

"operating lease" means the lease referred to in subsection (1)(b);

"relevant amount" means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback.".

(2) In sections 228A to 228J of the Capital Allowances Act 2001 (c. 2) (as inserted by subsection (1) above), a reference to a provision of that Act includes a reference to an equivalent provision of the Capital Allowances Act 1990 (c. 1) (with any necessary modification).

(3) This section applies to income tax and corporation tax chargeable in relation to periods that end on or after 17 March 2004.

(4) Schedule 23 contains transitional provision.

135 Rent factoring of leases of plant or machinery

(1) After section 785 of the Taxes Act 1988 insert—

"**785A Rent factoring of leases of plant or machinery**

(1) This section applies in any case where the following conditions are satisfied—

(a) a person (call him "P") is entitled to receive rentals under a lease of plant or machinery,

(b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,

(c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,

(d) apart from this section, some or all of the amount or value of the consideration for the transfer ("the relevant portion of the consideration") would fall to be brought into account neither—

(i) as income, nor

(ii) as a capital allowances disposal receipt,

for the purpose of calculating P's tax liability.

(2) In any such case, the relevant portion of the consideration—

(a) shall be treated for tax purposes as income of P,

(b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and

(c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.

(3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P's tax liability.

(4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.

(5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

(6) In this section—

"capital allowances disposal receipt" means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things;

"tax liability" means liability to income tax or corporation tax.".

(2) The amendment made by this section has effect where arrangements for the transfer from one person to another of a right to receive rentals are entered into on or after 2nd July 2004.

136 Manufactured dividends

Schedule 24 to this Act (which makes provision in relation to cases where payments are or have been made, or treated as made, which are representative of dividends on shares of companies resident in the United Kingdom) has effect.

137 Manufactured payments under arrangements having an unallowable purpose

(1) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) after paragraph 7 (irregular manufactured payments) insert—

"Manufactured payments under arrangements having an unallowable purpose

7A (1) This paragraph applies in any case where—

(a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and

(b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

(2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.

(3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—

(a) the arrangements,

(b) any related transaction (see sub-paragraphs (6) and (7)), or

(c) any transaction in pursuance of the arrangements,

include a purpose ("the unallowable purpose") which is not among the business or other commercial purposes of the company.

(4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.

(5) Where one of the purposes for which a company is at any time a party to—

(a) any arrangements,

(b) any related transaction in the case of any arrangements, or

(c) any transaction in pursuance of any arrangements,

is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.

(6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—

(a) the likely effect of the transactions, and

(b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

(7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—

(a) are not between the same parties, or

(b) are not between the parties to the arrangements.

(8) This paragraph does not apply if, as a result of any of the following provisions—

(a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),

(b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),

(c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.

(9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references to a transaction, or to a company being party to a transaction, are to be construed accordingly).

(10) In this paragraph—

"arrangements" includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

"manufactured payment" means any of the following—

(a) any manufactured dividend;

(b) any manufactured interest;

(c) any manufactured overseas dividend;

"related transaction" shall be construed in accordance with sub-paragraphs (6) and (7) above;

"relevant tax relief" means any of the following—

(a) any deduction in computing profits or gains for the purposes of corporation tax;

(b) any deduction against total profits;

(c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);

(d) the surrender of an amount by way of group relief;

"tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

"tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.".

(2) In section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) before subsection (2) insert—

"(1C) The application of subsection (1) above in relation to a payment made by a dealer is subject to paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose).".

This amendment has effect on and after the commencement date.

(3) The amendment made by subsection (1) has effect—

(a) in the case of new arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the commencement date, and

(b) in the case of old arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the day on which this Act is passed.

(4) But where—

(a) as a result of old arrangements, any income arose or accrued, or any gain accrued, to a company before the commencement date,

(b) the income or gain is or was within the charge to corporation tax, and

(c) a manufactured payment in pursuance of the arrangements is made, or deemed by or under any provision of the Tax Acts to be made, by the company on or after the day on which this Act is passed,

the amendment made by subsection (1) does not have effect in relation to so much of the manufactured payment as (on such just and reasonable apportionments as may be necessary) represents the income or gain.

(5) For the purposes of subsection (4)—

(a) "income" includes any income deemed by or under any provision of the Tax Acts to arise or accrue,

(b) "gain" includes any gain deemed by or under any provision of the Tax Acts to accrue.

(6) In this section—

"the commencement date" means 2nd July 2004;

"new arrangements" means any arrangements other than old arrangements;

"old arrangements" means arrangements which were, or some part of which was, entered into or acted upon before the commencement date.

(7) For the purposes of subsection (6), the cases where arrangements were, or some part of any arrangements was, acted upon before the commencement date are those cases where a transaction in pursuance of the arrangements, or of any part of the arrangements, has taken place before that date.

138 Gilt strips

(1) Schedule 13 to the Finance Act 1996 (c. 8) (discounted securities: income tax provisions) is amended as follows.

(2) In paragraph 8 (transfers between connected persons deemed to be at market value) after sub-paragraph (3) insert—

"(4) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.".

(3) In paragraph 9 (other transactions deemed to be at market value) after sub-paragraph (2) insert—

"(3) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.".

(4) In paragraph 14 (strips of government securities) for sub-paragraph (6) (regulations as to manner of determining market value) substitute—

"(6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of—

(a) any strip, or

(b) any security exchanged for strips of that security.".

(5) After paragraph 14A (strips of government securities: losses) insert—

"Strips of government securities: manipulation of acquisition, sale or redemption price

14B (1) This paragraph applies in any case where, as a result of any scheme or arrangement,—

(a) the amount paid by a person in respect of his acquisition of a strip is or was more than the market value of the strip at the time of that acquisition,

(b) the amount payable to a person on a transfer of a strip by him is less than the market value of the strip at the time of the transfer, or

(c) on redemption of a strip, the amount payable to a person, as the person holding the strip, is less than the market value of the strip on the day before redemption,

and the obtaining of a tax advantage by any person is the main benefit, or one of the main benefits, that might have been expected to accrue from, or from any provision of, the scheme or arrangement.

(2) In a case falling within sub-paragraph (1)(a) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above on a transfer of the strip by him as if he had paid in respect of his acquisition of the strip an amount equal to the market value of the strip at the time of that acquisition.

(3) In a case falling within sub-paragraph (1)(b) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if the amount payable to him on the transfer were an amount equal to the market value of the strip at the time of the transfer.

(4) In a case falling within sub-paragraph (1)(c) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if the amount payable to him on redemption were an amount equal to the market value of the strip on the day before redemption.

(5) For the purposes of this paragraph, no account shall be taken of any costs incurred in connection with any transfer or redemption of a strip or its acquisition.

(6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of a strip.

(7) In this paragraph "tax advantage" has the meaning given by section 709(1) of the Taxes Act 1988.".

(6) After paragraph 14B insert—

"Strips: manipulation of price: associated payment giving rise to capital gains tax loss

14C (1) Where—

(a) as a result of any scheme or arrangement which has an unallowable purpose, the circumstances are, or might have been, as mentioned in paragraph (a), (b) or (c) of paragraph 14B(1) above,

(b) under the scheme or arrangement, a payment falls to be made otherwise than in respect of the acquisition or disposal of a strip, and

(c) as a result of that payment or the circumstances in which it is made, a loss accrues to any person for the purposes of capital gains tax,

the loss shall not be an allowable loss for the purposes of capital gains tax.

(2) For the purposes of this paragraph a scheme or arrangement has an unallowable purpose if the main benefit, or one of the main benefits, that might have been expected to result from, or from any provision of, the scheme or arrangement (apart from paragraph 14B above and this paragraph) is—

(a) the obtaining of a tax advantage by any person, or

(b) the accrual to any person of an allowable loss for the purposes of capital gains tax.

(3) In this paragraph "tax advantage" has the meaning given by section 709(1) of the Taxes Act 1988.".

(7) After paragraph 14C insert—

"Restriction of profits and losses on strips by reference to original acquisition cost

14D (1) This paragraph has effect for the purpose of excluding from charge or, as the case may be, relief under this Schedule so much of—

(a) any profit realised by a person from the discount on a strip, or

(b) any loss sustained by a person from the discount on a strip,

as is referable to a relevant amount being less than the person's original acquisition cost for the strip.

For this purpose a relevant amount is any amount that falls to be brought into account as paid in respect of the acquisition of the strip or as payable on the transfer or redemption of the strip.

(2) Where, on the transfer or redemption of a strip,—

(a) a person realises a profit (apart from this paragraph) from the discount on the strip and amount C exceeds amount A, or

(b) a person sustains a loss (apart from this paragraph) from the discount on the strip and amount C exceeds amount P,

then, for the purposes of the other provisions of this Schedule, the profit or loss shall be restricted or eliminated in accordance with the following provisions of this paragraph.

(3) For the purposes of this paragraph—

"amount A" is the amount that falls to be brought into account as the amount paid by the person in respect of his acquisition of the strip in determining the amount of the profit or loss apart from this paragraph;

"amount C" is the person's original acquisition cost for the strip (see sub-paragraph (6) below);

"amount L" is the amount (apart from this paragraph) of the loss mentioned in sub-paragraph (2)(b) above;

"amount P" is the amount that falls to be brought into account as the amount payable on the transfer or redemption of the strip in determining the amount of the profit or loss apart from this paragraph.

(4) In a case falling within sub-paragraph (2)(a) above (person realising a profit)—

(a) if amount P exceeds amount C, the amount of the profit is restricted to the amount of that excess;

(b) if amount P does not exceed amount C, the person shall be treated as not realising a profit from the discount on the strip.

(5) In a case falling within sub-paragraph (2)(b) above (person sustaining a loss)—

(a) if amount A exceeds amount C, the amount of the loss is restricted to so much of amount L as remains after deducting from it the amount by which amount C exceeds amount P;

(b) if amount A does not exceed amount C, the person shall be treated for the purposes of this Schedule as not sustaining a loss from the discount on the strip.

(6) For the purposes of this paragraph a person's "original acquisition cost" in the case of a strip is the amount which—

(a) disregarding any deemed transfers or re-acquisitions under paragraph 14(4) above (other than the transfer mentioned in sub-paragraph (2) above, if it is such a transfer), but

(b) otherwise giving effect, so far as applicable, to paragraph 8, 9, 14 or 14B above (each of which treats a person acquiring a security as having paid an amount equal to its market value determined in accordance with paragraph 14E below),

would fall to be taken into account as the amount paid by the person in respect of his acquisition of the strip in determining whether a profit is realised, or a loss is sustained, from the discount on the strip.

(7) In this paragraph any reference to a transfer includes a reference to a deemed transfer under paragraph 14(4) above.

(8) In this paragraph any reference to sustaining a loss from the discount on a strip shall be construed in accordance with paragraph 14A above.".

(8) After paragraph 14D insert—

"Market value of strips etc for the purposes of paragraphs 8, 9, 14 and 14B

14E (1) This paragraph makes provision as to the manner of determining—

(a) for the purposes of paragraph 8, 9, 14 or 14B above, the market value at any time of a strip, and

(b) for the purposes of paragraph 14(2) above, the market value at any time of a security exchanged for strips of that security.

(2) The market value on any day of a strip or security quoted in the Daily List shall be—

(a) the lower of the two figures shown in the Daily List for the strip or security for that day,

plus

(b) one-quarter of the difference between those two figures,

unless the Stock Exchange is closed on that day.

(3) If the Stock Exchange is closed on any day, the market value on that day of any such strip or security shall be taken to be its market value on the latest previous day or earliest subsequent day on which the Stock Exchange is open, whichever affords the lower value.

(4) In the case of a strip or security which—

(a) is a security, or a strip of a security, issued by or on behalf of the government of a territory outside the United Kingdom, and

(b) is not quoted in the Daily List, but

(c) is quoted in a foreign stock exchange list,

the market value shall be determined in accordance with sub-paragraph (5) below.

(5) In any such case, sub-paragraphs (2) and (3) above shall have effect for determining the market value of the strip or security, but for this purpose those provisions shall have effect—

(a) with the substitution for references to the Daily List of references to the foreign stock exchange list,

(b) with the substitution for references to the Stock Exchange of references to the foreign stock exchange to which that list relates, and

(c) with any modifications which are necessary by reason of the form of quotation adopted in the foreign stock exchange list (including, in a case where a single figure only is published, taking that figure as the market value).

(6) Where a strip or security is quoted in more than one foreign stock exchange list—

(a) any such list published for a foreign stock exchange in the territory of the issuing government shall be used for the purposes of sub-paragraph (5) above in preference to any other such list, and

(b) any such list published for a foreign stock exchange which is regarded as the major exchange in that territory for strips or securities shall be used for those purposes in preference to any other such list.

(7) In this paragraph—

"the Daily List" means the The Stock Exchange Daily Official List;

"foreign stock exchange" means a recognised stock exchange in a territory outside the United Kingdom on which strips are traded;

"foreign stock exchange list" means any publication which performs in the case of a foreign stock exchange a function equivalent, or broadly similar, to that performed by the Daily List in relation to strips;

"issuing government" means the government which issued the security mentioned in sub-paragraph (4)(a) above.

(8) The Treasury may by regulations make provision as to the manner of determining, for any of the purposes mentioned in sub-paragraph (1) above, the market value at any time of—

(a) any strip, or

(b) any security exchanged for strips of that security.

(9) Regulations under sub-paragraph (8) above may—

(a) amend or modify any provision of this paragraph other than that sub-paragraph, sub-paragraph (1) above or this sub-paragraph;

(b) make different provision for different cases; and

(c) contain such incidental, supplemental, consequential and transitional provision and savings as the Treasury may think fit.".

(9) In paragraph 15(1) (general interpretation) in the definition of "market value" (which applies except in paragraph 14) for "(except in paragraph 14 above)" substitute "(except as provided in relation to paragraph 8, 9, 14 or 14B above by paragraph 14E above)".

(10) The amendments made by—

(a) subsections (2) and (3), and

(b) subsections (8) and (9), so far as relating to paragraph 8 or 9 of Schedule 13 to the Finance Act 1996 (c. 8),

have effect in relation to any transfer of a strip on or after 17th March 2004.

(11) The amendments made by—

(a) subsection (4), and

(b) subsections (8) and (9), so far as relating to paragraph 14 of Schedule 13 to the Finance Act 1996,

have effect in relation to exchanges on or after 17th March 2004 and deemed transfers and re-acquisitions under sub-paragraph (4) of that paragraph on or after that date.

(12) The amendments made by—

(a) subsection (5), and

(b) subsections (8) and (9), so far as relating to paragraph 14B of Schedule 13 to the Finance Act 1996,

have effect in relation to any strip held on 15th January 2004 or acquired after that date (and see subsection (15)).

(13) The amendment made by subsection (6) has effect in relation to losses accruing on or after 17th March 2004.

(14) The amendment made by subsection (7) has effect in relation to any strip acquired on or after 15th January 2004 (and see subsection (15)).

(15) In determining when a strip is acquired for the purposes of subsection (12) or (14), any deemed transfers or re-acquisitions under paragraph 14(4) of Schedule 13 to the Finance Act 1996 shall be disregarded.

139 Gifts of shares, securities and real property to charities etc

(1) Section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc) is amended as follows.

(2) For subsection (4) (the relevant amount) substitute—

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

(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);

(b) where the disposal is at an undervalue, the amount by which—

(i) the value described in paragraph (a) above, exceeds

(ii) the amount or value of the consideration for the disposal,

or, if there is no such excess, nil.".

(3) After subsection (8) insert—

"(8A) The value of the net benefit to the charity is—

(a) the market value of the qualifying investment, unless subsection (8B) below applies;

(b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).

(8B) This subsection applies in any case where—

(a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and

(b) one or more of the conditions in subsection (8C) below is satisfied.

(8C) For the purposes of subsection (8B) above—

(a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not), it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation;

(b) condition 2 is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a related investment (see subsection (8D)).

(8D) In subsection (8C) above "related investment" means any of the following—

(a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);

(b) any asset derived from, or representing, the qualifying investment whether in whole or in part and whether directly or indirectly;

(c) any asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.

(8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.

(8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.

(8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.".

(4) In subsection (9) (definitions) insert each of the following definitions at the appropriate place—

""obligation" includes a reference to each of the following—

(a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;

(b) a series of obligations (whether or not between the same parties);";

""related liabilities" shall be construed in accordance with subsection (8E) above;";

""value of the net benefit to the charity" shall be construed in accordance with subsection (8A) above;".

(5) After subsection (10) (market value) insert—

"(10A) Section 839 (connected persons) applies for the purposes of this section.".

(6) The amendments made by this section have effect in relation to any disposal to a charity on or after 2nd July 2004, except where the disposal is in performance of a contract entered into before that date and not varied on or after that date.

140 Life policies etc.: restriction of corresponding deficiency relief

(1) In Chapter 2 of Part 13 of the Taxes Act 1988 (life policies, life annuities and capital redemption policies), section 549 (certain deficiencies allowable as deductions) is amended as follows.

(2) In subsection (1) for the words from "the total amount" to the end substitute "the allowable amount".

(3) After that subsection insert—

"(1A) The allowable amount is the total of any amounts that—

(a) were treated as a gain by virtue of section 541(1)(d), 543(1)(c) or 546C(7) on the previous happenings of chargeable events, and

(b) formed part of that individual's total income for a previous year of assessment.".

(4) This section applies in relation to a deficiency occurring in connection with a policy of life insurance if—

(a) it is issued in respect of an insurance made on or after 3rd March 2004, or

(b) it is issued in respect of an insurance made before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the policy, or

(iii) all or part of the rights conferred by the policy become held as security for a debt.

(5) This section applies in relation to a deficiency occurring in connection with a contract for a life annuity if—

(a) it is entered into on or after 3rd March 2004, or

(b) it is entered into before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the contract being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the contract, or

(iii) all or part of the rights conferred by the contract become held as security for a debt.

(6) This section applies in relation to a deficiency occurring in connection with a capital redemption policy if—

(a) it is effected on or after 3rd March 2004, or

(b) it is effected before that date but on or after that date—

(i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),

(ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the policy, or

(iii) all or part of the rights conferred by the policy become held as security for a debt.

CHAPTER 11

MISCELLANEOUS

Reliefs for business

141 Relief for research and development: software and consumable items

(1) In Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for expenditure on research and development) for paragraph 6 (expenditure on consumable stores) substitute—

"Expenditure on software or consumable items

6 (1) For the purposes of this Schedule expenditure on software or consumable items means expenditure on—

(a) computer software, or

(b) consumable or transformable materials,

and references to software or consumable items shall be construed accordingly.

(2) For the purposes of this Schedule consumable or transformable materials include water, fuel and power.

(3) Expenditure on software or consumable items is attributable to relevant research and development if the software or consumable items are employed directly in such research and development.

(4) In the case of software or consumable items partly employed directly in relevant research and development, an appropriate portion of the expenditure on the software or consumable items is treated as attributable to relevant research and development.

(5) For the purposes of sub-paragraphs (3) and (4), software or consumable items employed in the provision of services, such as secretarial or administrative services, in support of other activities are not, by virtue of their employment in the provision of those services, to be treated as themselves directly employed in those other activities.".

(2) In each of the following enactments (which relate to tax relief for expenditure on research and development)—

(a) Schedule 20 to the Finance Act 2000 (c. 17) (small or medium-sized enterprises), other than paragraph 6,

(b) Schedule 12 to the Finance Act 2002 (c. 23) (large companies, work sub-contracted to, and large company relief for, small or medium-sized enterprises),

(c) Schedule 13 to that Act (vaccine research etc),

for the words "consumable stores", wherever occurring, substitute "software or consumable items".

(3) The amendments made by this section to Schedule 12 to the Finance Act 2002 (large companies etc) have effect in relation to expenditure incurred on or after 1st April 2004.

(4) Except as provided by subsection (5), the amendments made by this section to—

(a) Schedule 20 to the Finance Act 2000 (small or medium-sized enterprises),

(b) Schedule 13 to the Finance Act 2002 (vaccine research etc),

have effect in relation to expenditure incurred on or after the appointed day.

(5) The amendment made by subsection (1) (substitution of paragraph 6 of Schedule 20 to the Finance Act 2000), in its application for the purposes of Schedule 12 to the Finance Act 2002 by virtue of the amendments made to that Schedule by subsection (2), has effect in relation to expenditure incurred on or after 1st April 2004.

(6) In this section "the appointed day" means such day as the Treasury may by order appoint; and different days may be so appointed for different provisions or different purposes.

(7) The days that may be appointed by an order under subsection (6) include days earlier than the day on which this Act is passed, but not days earlier than 1st April 2004.

142 Temporary increase in amount of first-year allowances for small enterprises

(1) The amount of a first-year allowance under section 44 of the Capital Allowances Act 2001 (c. 2) (expenditure incurred by small or medium-sized enterprises) shall

be determined, in the case of expenditure to which this subsection applies, as if the percentage specified in the entry relating to that section in the Table in section 52(3) of that Act were 50%.

(2) Subsection (1) applies to expenditure incurred by a small enterprise (within the meaning of section 44 of that Act) in the period of 12 months beginning with—

(a) 1st April 2004, if the small enterprise is within the charge to corporation tax, or

(b) 6th April 2004, if the small enterprise is within the charge to income tax.

(3) Accordingly, in section 52(3) of the Capital Allowances Act 2001, after the Table insert—

"In the case of expenditure qualifying under section 44, see also section 142 of the Finance Act 2004 (substitution of 50% in the case of expenditure incurred by a small enterprise in 2004-05 or financial year 2004).".

143 Deduction for expenditure by landlords on energy-saving items

(1) After section 31 of the Taxes Act 1988 (Schedule A deductions and allowances: provisions supplementary to sections 25 to 30) insert—

"**31A Deductions for expenditure by landlords on energy-saving items**

(1) This section applies to a Schedule A business if the land mentioned in paragraph 1(1) of Schedule A consists of or includes a dwelling-house.

(2) In computing for the purposes of income tax the profits of a Schedule A business to which this section applies, a deduction shall be allowed in respect of any expenditure to which subsection (3) applies.

That is subject to any provision of regulations under subsection (13).

(3) This subsection applies to expenditure as respects which the numbered conditions set out in the following provisions of this section ("the qualifying conditions") are satisfied.

(4) Condition 1 is that the expenditure is incurred in the provision of a qualifying energy-saving item in the dwelling-house.

(5) Condition 2 is that the expenditure is incurred on or after 6th April 2004 but before 6th April 2009.

(6) Condition 3 is that the expenditure is incurred wholly and exclusively for the purposes of the Schedule A business.

(7) Condition 4 is that the expenditure is capital expenditure.

(8) Condition 5 is that, apart from this section, the expenditure is not deductible in computing the profits of the Schedule A business.

(9) Condition 6 is that no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

(10) Condition 7 is that the expenditure is not incurred in respect of the provision of an item in a dwelling-house which, at the time when the item is installed,—

(a) is in the course of construction, or

(b) is comprised in land in which the person claiming the deduction under this section does not have an interest or is in the course of acquiring an interest or further interest.

(11) Condition 8 is that for the purposes of section 503 (letting of furnished holiday accommodation to be treated as a trade for certain purposes) either—

(a) the Schedule A business does not consist to any extent in the commercial letting of furnished holiday accommodation, or

(b) if it does so consist to any extent, the dwelling-house does not constitute any or all of the furnished holiday accommodation in question.

(12) Condition 9 is that the income of the person claiming the deduction is not computed in accordance with paragraph 9 or 11 of Schedule 10 to the Finance (No. 2) Act 1992 (furnished accommodation) in respect of any qualifying residence which consists of or includes the dwelling-house.

(13) The Treasury may by regulations make provision for any of the following purposes—

(a) restricting or reducing the amount of expenditure in respect of which deductions may be claimed under this section;

(b) excluding entitlement to a deduction under this section in such cases as may be specified in, or determined in accordance with, the regulations;

(c) determining which of two or more persons is (and which is not) entitled to a deduction under this section in cases where different persons have different interests in land consisting of or including the whole or part of a building containing one or more dwelling-houses;

(d) making apportionments (including apportioning amounts to companies which are not entitled to a deduction under this section) in cases where—

(i) a Schedule A business is carried on by two or more persons in partnership, or

(ii) an interest in land is beneficially owned by two or more persons jointly or in common.

(14) Section 31B supplements this section.

31B Provisions supplementary to section 31A

(1) This section has effect for the purpose of supplementing section 31A and shall be construed as one with that section.

(2) Section 31A does not have effect for the purposes of corporation tax.

(3) No deduction may be made under section 31A unless a claim is made.

(4) Where, on a just and reasonable apportionment of any expenditure, the qualifying conditions—

(a) would be satisfied as respects some part or parts of the expenditure, but

(b) would not be satisfied as respects the remainder of the expenditure,

a deduction under section 31A shall be allowed in respect of the part or parts mentioned in paragraph (a) but not in respect of the remainder.

Any such deduction is subject to, and must be in accordance with, the other provisions of this section and regulations under section 31A(13).

(5) Expenditure incurred by a person—

(a) for the purposes of a Schedule A business, but

(b) before the time when he begins to carry on that business,

is not deductible under section 31A by virtue of section 401 (relief for pre-trading expenditure) unless the expenditure is incurred not more than 6 months before that time (and on or after 6th April 2004).

The reference to section 401 is a reference to that section as it applies for the purposes of Schedule A in relation to a Schedule A business by virtue of section 21B.

(6) "Qualifying energy-saving items" are items of any of the following descriptions—

(a) cavity wall insulation;

(b) loft insulation.

(7) The Treasury may by regulations amend subsection (6)—

(a) by adding further descriptions of items; or

(b) by removing or varying descriptions of items.

(8) The Treasury may by regulations provide that an item is to be regarded as an item of any particular description in subsection (6) only if it satisfies such conditions as may be specified in, or determined in accordance with, the regulations.

(9) The conditions that may be imposed by regulations under subsection (8) include conditions imposed by reference to information or documents issued by any body, person or organisation.

(10) The provision that may be made by regulations under this section or section 31A which are made on or before 31st December 2004 includes provision—

(a) having effect before the date on which the regulations are made, or

(b) having effect in relation to expenditure incurred before that date.

(11) Any reference to the provision of a qualifying energy-saving item is a reference to the acquisition of such an item and its installation in the dwelling-house.".

(2) The amendment made by this section has effect in relation to expenditure incurred on or after 6th April 2004 but before 6th April 2009.

144 Lloyd's names: conversion to limited liability underwriting

Schedule 25 to this Act (which makes provision for certain reliefs to be available where a member of Lloyd's converts to limited liability underwriting) has effect.

Offshore matters

145 Offshore funds

(1) The provisions of the Taxes Act 1988 relating to offshore funds are amended in accordance with Schedule 26 to this Act.

(2) Except as otherwise provided—

(a) the amendments have effect for account periods (within the meaning of Chapter 5 of Part 17 of that Act) ending on or after the day on which this Act is passed, and

(b) regulations made under a power conferred by virtue of any of the amendments may be made so as to have effect in relation to any such account period.

146 Meaning of "offshore installation"

Schedule 27 to this Act (which makes amendments relating to the meaning of "offshore installation") has effect.

Health

147 Immediate needs annuities

(1) The Taxes Act 1988 is amended as follows.

(2) In section 431 (interpretative provisions relating to insurance companies) in subsection (2) (interpretation for purposes of Chapter 1 of Part 12) in the definition of "annuity business", at the end insert ", other than the business of granting immediate needs annuities (within the meaning of section 580C)".

(3) After section 580B insert—

"**580C Relief from tax on annual payments under immediate needs annuities**

(1) No liability to income tax arises in respect of a relevant annual payment made under an immediate needs annuity to the extent that—

(a) it is made for the benefit of the person protected under the immediate needs annuity, and

(b) it is made to a care provider or a local authority in respect of the provision of care for the person protected.

(2) In this section "relevant annual payment" means an annual payment which—

(a) would (apart from this section) be brought into charge under Case III of Schedule D, or

(b) is equivalent to a description of payment brought into charge under Case III of that Schedule but would (apart from this section) be brought into charge under Case V of that Schedule.

(3) In this section "immediate needs annuity" means a contract for a life annuity—

(a) the purpose, or one of the purposes, of which is to protect a person against the consequences of his being unable, at the time the contract is made, to live independently without assistance because of—

(i) mental or physical impairment, or

(ii) injury, sickness or other infirmity,

which is expected to be permanent, and

(b) under which benefits are payable in respect of the provision of care for the person protected.

(4) In this section "care provider" means a person who carries on a trade, profession or vocation which consists of or includes the provision of care and who—

(a) in relation to care provided in England and Wales or Northern Ireland, is registered under the relevant enactment in respect of the provision of care;

(b) in relation to care provided in Scotland, provides care which is registered under the relevant enactment;

(c) in relation to care provided in a territory outside the United Kingdom, satisfies comparable requirements under the law of that territory relating to the provision of care.

(5) In this section "the relevant enactment" means—

(a) in relation to England and Wales, Part 2 of the Care Standards Act 2000,

(b) in relation to Scotland, Part 1 of the Regulation of Care (Scotland) Act 2001,

(c) in relation to Northern Ireland, Part 2 or 3 of the Registered Homes (Northern Ireland) Order 1992 or Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

(6) In this section "care" means accommodation, goods or services which it is necessary or desirable to provide to a person because of—

(a) mental or physical impairment, or

(b) injury, sickness or other infirmity,

which is expected to be permanent.

(7) In this section "life annuity" means an annuity to which section 656 (read with section 657) applies.

(8) The Treasury may by order amend—

(a) the definition of "immediate needs annuity" in subsection (3) above;

(b) the definitions of "care provider" in subsection (4) above and of "the relevant enactment" in subsection (5) above.".

(4) The amendment made by subsection (2) has effect in relation to accounting periods beginning on or after 1st January 2005.

(5) For the purposes of section 547(5A)(b) of the Taxes Act 1988 (chargeable event gains: method of charging gain to tax), an immediate needs annuity made before 1st January 2005 shall not be taken, by virtue of the amendment made by subsection (2), to fall or to have at any time fallen to be regarded as not forming part of an insurance company

or friendly society's basic life assurance and general annuity business the income and gains of which are subject to corporation tax.

(6) The amendment made by subsection (3) has effect in relation to annual payments made on or after 1st October 2004 (whenever the immediate needs annuity in question was made).

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At the end of section 519A of the Taxes Act 1988 (health service bodies: exemptions from income and corporation tax) add—

"(3) The Treasury may by order disapply subsection (1)(b) in relation to a specified activity, or class of activity, of an NHS foundation trust.

(4) An order under subsection (3) shall make provision for determining the amount of the profits relating to an activity that are to be charged to corporation tax as a result of the disapplication of subsection (1)(b).

(5) An order under subsection (3) may, in particular—

(a) make provision for disregarding profits of less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(b) make provision for disregarding a specified part of profits in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(c) make provision for disregarding all or part of profits relating to activity in respect of which receipts or turnover (as defined by the order) are less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period.

(6) An order under subsection (3)—

(a) may apply, with or without modification, a provision of the Tax Acts,

(b) may disapply a provision of the Tax Acts,

(c) may make provision similar to a provision of the Tax Acts, and

(d) may make provision generally or in relation to a specified body or class of bodies.

(7) The Treasury may make an order under subsection (3) only—

(a) in relation to an activity or class of activity that appears to the Treasury to be of a commercial nature,

(b) where it appears to the Treasury to be expedient for the purpose of avoiding, removing or reducing differences between—

(i) the fiscal treatment of the body undertaking the activity, and

(ii) the fiscal treatment of another body or class of body which is of a commercial nature and which undertakes or might undertake the same or a similar activity, and

(c) if a draft has been laid before, and approved by resolution of, the House of Commons.

(8) An activity authorised under section 14(1) of the Health and Social Care (Community Health and Standards) Act 2003 shall not be treated as an activity of a commercial nature for the purposes of subsection (7)(a).".