



# Finance (No. 2) Act 2005

## 2005 CHAPTER 22

### PART 2

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

### CHAPTER 1

#### PERSONAL TAXATION

#### *Social security pension lump sums*

#### **7 Charge to income tax on lump sum**

- (1) A charge to income tax arises where a person becomes entitled to a social security pension lump sum.
- (2) For the purposes of the Tax Acts (including subsection (5)) a social security pension lump sum—
  - (a) is to be treated as income, but
  - (b) is not to be taken into account in determining the total income of any person.
- (3) The person liable to a charge under this section is the person (“P”) entitled to the lump sum, whether or not P is resident, ordinarily resident or domiciled in the United Kingdom.
- (4) The charge is imposed on P for the applicable year of assessment (see subsection (6)).
- (5) A charge under this section is a charge in respect of the amount of the lump sum at the following rate—
  - (a) if P’s total income for the applicable year of assessment is nil, 0%;
  - (b) if P’s total income for that year of assessment is greater than nil but does not exceed the starting rate limit for that year, the starting rate for that year;

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- (c) if P's total income for that year of assessment exceeds the starting rate limit but does not exceed the basic rate limit for that year, the basic rate for that year;
  - (d) if P's total income for that year of assessment exceeds the basic rate limit for that year, the higher rate for that year.
- (6) Section 8 makes provision as to the meaning of “the applicable year of assessment” for the purposes of this section.
- (7) Section 9 contains further definitions and makes provision as to commencement.
- (8) Section 10 contains consequential amendments.

## **8 Meaning of “applicable year of assessment” in section 7**

- (1) For the purposes of section 7 “the applicable year of assessment” has the meaning given by this section.
- (2) Subject to subsections (5) to (7), the applicable year of assessment is—
- (a) the year of assessment in which the first benefit payment day falls, or
  - (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (3) For the purposes of subsection (2) “the first benefit payment day” is, subject to subsection (4), the day as from which P's—
- (a) Category A or Category B retirement pension,
  - (b) shared additional pension, or
  - (c) graduated retirement benefit,
- becomes payable following the period of deferment by virtue of which P's entitlement to the lump sum arises.
- (4) But where—
- (a) the lump sum is a state pension lump sum to which P is entitled under paragraph 7A of Schedule 5 to SSCBA 1992 or paragraph 7A of Schedule 5 to SSCB(NI)A 1992 or a graduated retirement benefit lump sum to which P is entitled under a provision corresponding to either of those paragraphs, and
  - (b) at the time of S's death, P was entitled to a Category A or Category B retirement pension or (as the case may be) graduated retirement benefit,
- the first benefit payment day is the day on which S died; and for this purpose “S” is the person by virtue of whose period of deferment P's entitlement to the lump sum arises.
- (5) Subsections (6) and (7) apply where social security regulations make provision enabling the making of an election for a social security pension lump sum to be paid in the year of assessment (“the later year of assessment”) next following that given by subsection (2).
- (6) If such an election is made by P and is not revoked, the applicable year of assessment is—
- (a) the later year of assessment, or
  - (b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.
- (7) If—
- (a) P dies after the beginning of the later year of assessment,

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- (b) by the time of P’s death, P has not notified the Secretary of State as to whether or not P wishes to make such an election,
  - (c) social security regulations make provision enabling the making of such an election in such a case by the personal representatives of P, and
  - (d) P’s personal representatives make such an election in accordance with the regulations,
- the applicable year of assessment is the later year of assessment.
- (8) For the purposes of determining the applicable year of assessment, it does not matter when the lump sum is actually paid.
- (9) In this section—
- “Category A or Category B retirement pension” means Category A or Category B retirement pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
  - “graduated retirement benefit” means graduated retirement benefit under section 36 or 37 of NIA 1965 or section 35 or 36 of NIA(NI) 1966;
  - “shared additional pension” means shared additional pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;
  - “social security regulations” means any regulations under—
    - (a) the Social Security Administration Act 1992 (c. 5), or
    - (b) the Social Security Administration (Northern Ireland) Act 1992 (c. 8).
- (10) This section is to be construed as one with section 7.

## **9 Interpretation and commencement**

- (1) In sections 7 and 8 “social security pension lump sum” means—
- (a) a state pension lump sum,
  - (b) a shared additional pension lump sum, or
  - (c) a graduated retirement benefit lump sum.
- (2) In section 8 and this section—
- “graduated retirement benefit lump sum” means a lump sum payable under—
    - (a) section 36 or 37 of NIA 1965, or
    - (b) section 35 or 36 of NIA(NI) 1966;
  - “shared additional pension lump sum” means a lump sum payable under—
    - (a) section 55C of, and Schedule 5A to, SSCBA 1992, or
    - (b) section 55C of, and Schedule 5A to, SSCB(NI)A 1992;
  - “state pension lump sum” means a lump sum payable under—
    - (a) section 55 of, and Schedule 5 to, SSCBA 1992, or
    - (b) section 55 of, and Schedule 5 to, SSCB(NI)A 1992.
- (3) In section 8 and this section—
- “NIA 1965” means the National Insurance Act 1965 (c. 51);
  - “NIA(NI) 1966” means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));
  - “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992 (c. 4);

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“SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

- (4) Sections 7 and 8 and this section have effect in relation to the year 2006-07 and subsequent years of assessment.

## 10 Consequential amendments

- (1) ITEPA 2003 is amended as follows.

- (2) In section 577 (UK social security pensions) after subsection (1) insert—

“(1A) But this section does not apply to any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005).”.

- (3) In section 683 (PAYE income) in subsection (3) (meaning, subject to subsection (4), of “PAYE pension income”) in the opening words, for “subsection (4)” substitute “subsections (3A) and (4)”.

- (4) In that section, after subsection (3) insert—

“(3A) “PAYE pension income” for a tax year also includes any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005) in respect of which a charge to income tax arises under that section for that tax year.”.

- (5) In section 686 (meaning of “payment”) in subsection (1) (rules as to when payment of, or on account of, PAYE income is to be treated as made for the purposes of PAYE regulations) at the end of the subsection insert—

“But this is subject to subsection (5) (PAYE pension income: social security pension lump sums).”.

- (6) In that section, after subsection (4) insert—

“(5) For the purposes of PAYE regulations, a payment of, or on account of, an amount which is PAYE pension income of a person by virtue of section 683(3A) (social security pension lump sums) is to be treated as made at the time when the payment is made.”.

- (7) In Schedule 1 (abbreviations and defined expressions) in Part 1 (abbreviations of Acts and instruments) insert at the end—

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“F(No.2)A 2005

The Finance (No. 2) Act 2005 (c. 22)”.

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## *Gift aid*

## 11 Donations to charity by individuals

- (1) For section 25(5E) to (5G) of FA 1990 (donations to charity by individuals: benefits: disregard of certain rights of admission) substitute—

“(5E) In determining whether a gift to a charity is a qualifying donation the benefit of any right of admission received in consequence of the gift shall be disregarded if subsections (5F) to (5H) are satisfied in relation to the right.

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- (5F) This subsection is satisfied if the opportunity to make a gift and to receive the right of admission in consequence is available to the public.
- (5G) This subsection is satisfied if the right of admission is a right granted by the charity for the purpose of viewing property preserved, maintained, kept or created by a charity in pursuance of its charitable purposes, including, in particular—
- (a) buildings,
  - (b) grounds or other land,
  - (c) plants,
  - (d) animals,
  - (e) works of art (but not performances),
  - (f) artefacts, and
  - (g) property of a scientific nature.
- (5H) This subsection is satisfied if—
- (a) the right of admission applies, during a period of at least one year, at all times at which the public can obtain admission, or
  - (b) a member of the public could purchase the same right of admission and the amount of the gift is greater by at least 10% than the amount which he would have to pay.
- (5I) In subsection (5E) “right of admission” means a right of admission—
- (a) of the person who makes the gift or of that person and one or more members of his family (whether or not the right must be exercised by all those persons at the same time),
  - (b) to premises or property to which the public are admitted on payment of an admission fee, and
  - (c) without payment of the admission fee or on payment of a reduced fee;
- and in the application of subsection (5H)(b) “the same right of admission” means a right relating to the same property, classes of person and periods of time as the right received in consequence of the gift.
- (5J) For the purposes of subsection (5H)(a) a right of admission shall be treated as applying at all times at which the public can obtain admission despite the fact that the right does not apply on days specified by the charity, being days on each of which an event is to take place on the premises to which the right relates; provided that no more than 5 days are specified for that purpose in relation to—
- (a) the period during which the right applies, in the case of a period of one year, or
  - (b) each calendar year during all or part of which the right applies, in the case of a right applying for a period of more than one year.”
- (2) This section shall have effect in relation to gifts made on or after 6th April 2006.

### *Employee securities*

## **12 Employee securities: anti-avoidance**

Schedule 2 contains amendments relating to employee securities.

## CHAPTER 2

### SCIENTIFIC RESEARCH ORGANISATIONS

#### 13 Corporation tax exemption for organisations

- (1) Section 508 of ICTA (tax exemption for scientific research organisations) is amended as follows.
- (2) In subsection (1) (Associations undertaking scientific research and approved by Secretary of State), for paragraph (a) substitute—
  - “(a) an Association has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade; and”.
- (3) In that subsection, for “, be allowed in the case of the Association” substitute “in relation to any accounting period, be allowed in the case of the Association for that accounting period”.
- (4) After that subsection insert—
  - “(1A) The Treasury may by regulations prescribe circumstances in which the conditions in subsection (1) above shall be deemed not to be complied with.
  - (1B) The Treasury may by regulations make provision specifying for the purposes of paragraph (a) of that subsection—
    - (a) what shall be deemed to be, or not to be, an Association,
    - (b) circumstances in which an Association shall be deemed to have, or not to have, the undertaking of research and development as its object,
    - (c) circumstances in which the undertaking of research and development shall be deemed to be, or not to be, capable of leading to or facilitating an extension of a class of trade, or
    - (d) what shall be deemed to be, or not to be, a class of trade.”
- (5) For subsection (3) (meaning of “scientific research”) substitute—
  - “(3) Section 837A (meaning of “research and development”) applies for the purposes of subsection (1)(a) above.
  - (4) Regulations under subsection (3) of that section (power to prescribe activities which are, or are not, research and development) may make provision for the purposes of that section as it applies by virtue of subsection (3) of this section which is additional to, or different from, the provision made otherwise for the purposes of that section.”
- (6) This section has effect in relation to accounting periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint.

#### 14 Income tax deduction for payments to organisations

- (1) Section 88 of ITTOIA 2005 (income tax deduction for payments to research associations etc.) is amended as follows.
- (2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to “research” in paragraph (b) substitute—

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- “(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the person belongs, or
  - (b) pays any sum to be used for scientific research related to that class of trade”.
- (3) In subsection (4), omit paragraph (a) (meaning of “approved” in relation to scientific research association).
- (4) In subsection (5) (references to scientific research related to a class of trade), for “references in this section” substitute “reference in subsection (1)(b)”.
- (5) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

## **15 Corporation tax deduction for payments to organisations**

- (1) Section 82B of ICTA (corporation tax deduction for payments to research associations etc.) is amended as follows.
- (2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to “above” in paragraph (b) substitute—
- “(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the company belongs, or
  - (b) pays any sum to be used for scientific research related to that class of trade”.
- (3) In subsection (3) (reference to scientific research related to a class of trade), for “this section” substitute “subsection (1)(b) above”.
- (4) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

## **CHAPTER 3**

### **AUTHORISED INVESTMENT FUNDS ETC**

## **16 Open-ended investment companies**

After section 468 of ICTA (authorised unit trust schemes) insert—

### **“468A Open-ended investment companies**

- (1) In relation to an open-ended investment company the rate of corporation tax for the financial year 2005 and subsequent financial years shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned (and sections 13, 13AA and 13AB shall not apply).

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- (2) In this section “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies.
- (3) Each of the parts of an umbrella company shall be regarded for the purposes of this section as an open-ended investment company and the umbrella company as a whole shall not be so regarded (and shall not, unless an enactment expressly provides otherwise, be regarded as a company for any other purpose of the Tax Acts).
- (4) In subsection (3) “umbrella company” means an open-ended investment company—
  - (a) in respect of which the instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are to be made to them, and
  - (b) the shareholders of which are entitled to exchange rights in one pool for rights in another,
 and a reference to part of an umbrella company is a reference to a separate pool.”

## **17 Authorised unit trusts and open-ended investment companies**

- (1) The following provisions shall cease to have effect—
  - (a) sections 468H to 468Q of ICTA (authorised unit trusts),
  - (b) paragraphs 2A and 2B of Schedule 10 to FA 1996 (authorised unit trusts and open-ended investment companies: loan relationships),
  - (c) paragraphs 32 and 33 of Schedule 26 to FA 2002 (collective investment schemes: derivative contracts),
  - (d) section 373(4) and (6) of ITTOIA 2005 (open-ended investment company: interest distributions), and
  - (e) section 376(4) and (6) of ITTOIA 2005 (authorised unit trust: interest distributions).
- (2) In this Chapter “authorised investment funds” means—
  - (a) authorised unit trust schemes, and
  - (b) open-ended investment companies.
- (3) The Treasury may, by regulations—
  - (a) make provision about the treatment of authorised investment funds for the purposes of an enactment relating to taxation;
  - (b) provide for the modification of an enactment relating to taxation in its application in relation to—
    - (i) authorised investment funds,
    - (ii) shareholders or unit holders in authorised investment funds, or
    - (iii) transactions involving authorised investment funds;
  - (c) impose requirements on persons responsible for the management of an authorised investment fund in relation to the provision of information, the form of accounts, the keeping of records or other administrative matters.
- (4) For the purposes of this Chapter—



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- (a) “unit trust scheme” has the meaning given by section 237 of the Financial Services and Markets Act 2000 (c. 8),
- (b) a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of the Financial Services and Markets Act 2000 is in force in relation to that scheme during the whole or part of that accounting period,
- (c) “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme,
- (d) a reference to a shareholder or unit holder includes a person beneficially entitled to shares or units (and a reference to owning units or shares shall be construed accordingly),
- (e) “open-ended investment company” means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies,
- (f) “associate” has the meaning given by section 417 of ICTA,
- (g) “net asset value” means the value of the assets of the authorised investment fund, after the deduction of specified liabilities,
- (h) a reference to a distribution includes investing an amount on behalf of a unit holder or shareholder in respect of his accumulation units or accumulation shares,
- (i) “distribution accounts” means accounts showing—
  - (i) the total amount available for distribution to unit holders or shareholders, and
  - (ii) how that amount is computed,
- (j) the “distribution date” for a distribution period in relation to an authorised investment fund means—
  - (i) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or
  - (ii) if no date is specified, the last day of that distribution period,
- (k) “distribution period” in relation to an authorised investment fund means a period by reference to which the total amount available for distribution to unit holders or shareholders is ascertained,
- (l) “umbrella company” has the meaning given by section 468A of ICTA,
- (m) “umbrella scheme” has the meaning given by section 468 of ICTA, and
- (n) section 839 of ICTA (connected persons) applies.

## **18 Section 17(3): specific powers**

- (1) Regulations under section 17(3)(a) or (b) may make provision about distributions which may, in particular—
  - (a) require an authorised investment fund to comply with prescribed rules for determining (whether by reference to a formula or otherwise) what proportion of an amount shown in distribution accounts as available for distribution is to be distributed by way of dividends and what proportion is to be distributed by way of yearly interest;
  - (b) permit persons responsible for the management of an authorised investment fund to elect to distribute entirely by way of dividends;
  - (c) require distribution accounts to show the amount available for distribution—
    - (i) by way of dividends;

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- (ii) by way of yearly interest;
  - (d) allow a distribution of yearly interest for a distribution period to be deducted, in the prescribed manner, in computing the profits of the authorised investment fund for the accounting period in which the last day of that distribution period falls;
  - (e) make provision for determining the distribution date in relation to a distribution period of an authorised investment fund;
  - (f) permit distributions to be made, in prescribed circumstances, to or for the benefit of a person not ordinarily resident in the United Kingdom without deducting tax;
  - (g) permit distributions to be made without deducting tax, in prescribed circumstances, to a person ordinarily resident in the United Kingdom who is unlikely to be liable to pay an amount by way of income tax for the year of assessment in which the distribution is made;
  - (h) include provision, in respect of a unit holder or shareholder who is within the charge to corporation tax, about—
    - (i) the liability to corporation tax resulting from receipt of a distribution, and
    - (ii) the method of computing that liability.
- (2) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision for loan relationships held by an authorised investment fund;
  - (b) make special provision for derivative contracts held by an authorised investment fund;
  - (c) modify the meaning of “relevant holding” for the purposes of—
    - (i) paragraph 4 of Schedule 10 to FA 1996 (loan relationships), and
    - (ii) paragraph 36 of Schedule 26 to FA 2002 (derivative contracts);
  - (d) make special provision in relation to the treatment of umbrella companies and umbrella schemes (or shareholders or unit holders in umbrella companies or umbrella schemes);
  - (e) prohibit action which favours a class of unit holders or shareholders.
- (3) Regulations under section 17(3)(a) or (b) may, in particular—
- (a) make special provision in relation to a person who, alone or together with associates or connected persons, owns (otherwise than as a nominee) units or shares, in a fund designated by the Financial Services Authority as a Qualified Investor Scheme, which represent 10% or more (or such other percentage as the regulations may specify) of the net asset value of the fund;
  - (b) include exceptions from provision made by virtue of paragraph (a) above including, in particular, an exception relating to units or shares held—
    - (i) by a charity (within the meaning of section 506(1) of ICTA),
    - (ii) by a registered pension scheme (within the meaning of section 150 of FA 2004),
    - (iii) by an insurance company (within the meaning of section 431(2) of ICTA) as assets of its long-term insurance fund (within the meaning of that section), or
    - (iv) by such other persons, in such circumstances, as the regulations may specify.

- (4) Regulations under section 17(3)(c) may, in particular, require persons responsible for the management of an authorised investment fund to supply information to, and make available books, documents and other records for inspection by, the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under section 17(3) may, in particular—
  - (a) amend a reference in an enactment to a provision repealed by section 17(1);
  - (b) make different provision for different circumstances;
  - (c) make incidental, consequential, supplemental or transitional provision.

## **19 Section 17: commencement and procedure**

- (1) Section 17(1) shall come into force on such day as the Treasury may appoint by order.
- (2) An order under subsection (1) may—
  - (a) commence only a specified repeal;
  - (b) commence different repeals at different times;
  - (c) commence a repeal at different times for different purposes;
  - (d) include savings.
- (3) Regulations under section 17(3) shall be subject to annulment by a resolution of the House of Commons.
- (4) But the first set of regulations under section 17(3) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

## **20 Unauthorised unit trusts: chargeable gains**

- (1) Section 100 of TCGA 1992 (exemption for authorised unit trusts, etc) shall be amended as follows.
- (2) After subsection (2) insert—
  - “(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—
    - (a) have been disposed of by a unit holder, and
    - (b) are held by the managers of the scheme (in that capacity) pending disposal.
  - (2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—
    - (a) an insurance company (within the meaning given by section 431 of the Taxes Act), or
    - (b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act).”
- (3) This section shall have effect for the year 2005-06 and subsequent years of assessment.

## 21 Unit trusts: treatment of accumulation units

- (1) In Chapter 3 of Part 3 of TCGA 1992 (collective investment schemes, etc) after section 99A insert—

### “99B Calculation of the disposal cost of accumulation units

- (1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1) (b) if—
- (a) it represents income from the investments subject to the unit trust scheme,
  - (b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and
  - (c) it is either—
    - (i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or
    - (ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.
- (2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—
- (a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and
  - (b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.
- (3) In subsection (2)(a) “distribution date” and “distribution period” shall have the meaning given by section 468H of the Taxes Act.”

- (2) This section shall have effect in relation to a disposal of units on or after 16th March 2005.

## 22 Section 349B ICTA: exemption for distributions to PEP/ISA managers

- (1) Section 349B(4) of ICTA (requirement for individual to be entitled to income tax exemption) shall be amended as follows.
- (2) In paragraph (a) after “of a plan” insert “of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply”.
- (3) Paragraph (b) shall cease to have effect.
- (4) This section shall have effect in relation to payments made on or after 6th April 2005.

## 23 Offshore funds

- (1) In section 761 of ICTA (charge on offshore income gain)—

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- (a) in subsection (2)—
    - (i) for “sections 2(1) and 10” substitute “sections 2(1), 10 and 10B”, and
    - (ii) for “section 11(2)(b)” substitute “section 11(2A)(c)”, and
  - (b) in subsection (3)—
    - (i) for “section 10” substitute “sections 10 and 10B”,
    - (ii) for “subsection (1) of that section” substitute “subsection (1) of section 10”, and
    - (iii) for “and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom”” substitute “and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom and””.
- (2) For paragraph 1(1)(d) of Schedule 27 to ICTA (distributing funds) substitute—
- “(d) the form of the distribution is such that—
    - (i) if any sum forming part of it were received in the United Kingdom by an individual resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005, or
    - (ii) if any sum forming part of it were received in the United Kingdom by a company resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax in accordance with section 18 of ICTA (Schedule D)—
      - (a) under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom, or
      - (b) under Case V of Schedule D;”.
- (3) For paragraph 3(1)(a) of that Schedule (distributing funds) substitute—
- “(a) the holders of interests in the fund who are individuals domiciled and resident in the United Kingdom—
    - (i) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests; or
    - (ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom;
  - (aa) the holders of interests in the fund which are companies resident in the United Kingdom—
    - (i) are chargeable to tax under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom;
    - (ii) are chargeable to tax under Case V of Schedule D; or
    - (iii) if any of that income is derived from assets within the United Kingdom, would have been chargeable under subparagraph (i) or (ii) had the assets been outside the United Kingdom; and”.

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- (4) In paragraph 3(1)(b) of that Schedule (distributing funds) for “sub-paragraph (i) or (ii)” substitute “paragraph (a) or (aa)”.

## CHAPTER 4

### AVOIDANCE INVOLVING TAX ARBITRAGE

#### 24 Deduction cases

- (1) If the Commissioners for Her Majesty’s Revenue and Customs consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to a transaction to which a company falling within subsection (2) is party, they may give the company a notice under this section.
- (2) A company falls within this subsection if—
  - (a) it is resident in the United Kingdom, or
  - (b) it is resident outside the United Kingdom but is within the charge to corporation tax.
- (3) Condition A is that the transaction to which the company is party forms part of a scheme that is a qualifying scheme.
- (4) Condition B is that the scheme is such that for the purposes of corporation tax the company is in a position to claim or has claimed an amount by way of deduction in respect of the transaction or is in a position to set off or has set off against profits in an accounting period an amount relating to the transaction.
- (5) Condition C is that the main purpose, or one of the main purposes, of the scheme is to achieve a UK tax advantage for the company.
- (6) Condition D is that the amount of the UK tax advantage in question is more than a minimal amount.
- (7) A notice under this section is a notice—
  - (a) specifying the transaction in relation to which the Commissioners consider that conditions A to D are or may be satisfied,
  - (b) specifying the accounting period in relation to which the Commissioners consider that condition B is or may be satisfied as regards the transaction, and
  - (c) informing the company that as a consequence section 25 (rules relating to deductions) has effect in relation to the transaction.
- (8) Nothing in this section prevents the Commissioners from giving a company falling within subsection (2) a notice under this section as regards two or more transactions.
- (9) Schedule 3 makes provision about what constitutes a qualifying scheme.

#### 25 Rules relating to deductions

- (1) The following provisions of this section apply in relation to a transaction if—
  - (a) a notice specifying the transaction is given to a company under section 24, and
  - (b) when the notice is given, conditions A to D of section 24 are satisfied in relation to the transaction.

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- (2) The company must compute (or recompute) for the purposes of corporation tax its income or chargeable gains, or its liability to corporation tax—
  - (a) for the accounting period specified in the notice under section 24, and
  - (b) for any subsequent accounting period,in accordance with rules A and B.
- (3) Rule A is that, in respect of the specified transaction, no amount is allowable as a deduction for the purposes of the Corporation Tax Acts to the extent that, in relation to the expense in question, an amount may be otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes of any tax (including any foreign tax) other than—
  - (a) petroleum revenue tax, or
  - (b) the tax chargeable under section 501A(1) of ICTA (supplementary charge in respect of ring fence trades).
- (4) The reference in subsection (3) to an amount otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes there mentioned includes a reference to an amount that would be so deducted or allowed but for any rule that has the same effect as rule A.
- (5) For the purposes of subsection (4) “rule” means—
  - (a) a provision of the Tax Acts, or
  - (b) a rule having effect under the tax law of any territory outside the United Kingdom.
- (6) Rule B applies if—
  - (a) a transaction, or a series of transactions, forming part of the scheme by reference to which conditions A to D are satisfied makes or imposes provision as a result of which one person (“the payer”) makes a payment and another person (“the payee”) receives, or becomes entitled to receive, a payment or payments,
  - (b) in respect of the payment by the payer, an amount may be deducted or otherwise allowed to the payer, or to another person who is party to, or concerned in, the scheme, in computing any profits or losses for tax purposes, and
  - (c) in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions, or part of such payment or payments, the payee is not liable to tax or, if liable, his liability to tax is reduced as a result of provision made or imposed by the scheme.
- (7) Without prejudice to the generality of subsection (6)(c), the payee’s liability to tax in respect of the payment or payments that he receives or is entitled to receive as a result of the transaction or series of transactions shall be treated for the purposes of subsection (6)(c) as reduced as a result of provision made or imposed by the scheme if—
  - (a) an amount arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of transactions forming part of the scheme, falls to be deducted or otherwise allowed to the payee in computing for tax purposes any profits or losses arising from the payment or payments or the entitlement to receive the payment or payments, or
  - (b) an amount of relief arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of

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transactions forming part of the scheme, may be deducted from the amount of income or gains arising from the payment or payments or the entitlement to receive the payment or payments.

- (8) The requirement in subsection (6)(c) is not satisfied if the payee is not liable to tax because he is not liable to tax on any income or gains received by him or for his benefit under the tax law of any territory.
- (9) The requirement in subsection (6)(c) is not satisfied if, or to the extent that, the payee is not subject to tax because his liability to tax is subject to an exemption falling within subsection (10).
- (10) An exemption falls within this subsection if—
- (a) it exempts a person from being liable to tax in respect of income or gains, without providing for that income or those gains to be treated as the income or gains of one or more other persons, and
  - (b) it is conferred by a provision contained in or having the force of an Act or by a provision of the tax law of any territory outside the United Kingdom.
- (11) Rule B is that the aggregate of the amounts allowable as a deduction for the purposes of the Corporation Tax Acts in computing any profits to the company arising from—
- (a) the specified transaction, and
  - (b) any other transaction that forms part of the scheme and to which the company is party,
- is to be reduced in accordance with subsections (12) and (13).
- (12) If, in respect of the payment or payments that the payee receives or is entitled to receive, the payee is not liable to tax for the purposes of the requirement in subsection (6)(c), the aggregate is to be reduced to nil.
- (13) If, in respect of the payment or payments, the payee is liable to tax as regards part or his liability to tax is reduced as described in subsection (6)(c), the aggregate is to be reduced to such proportion of the aggregate as is equal to the proportion of the payment or payments on which the payee is liable to tax; and for this purpose the amount by which the payee's liability is reduced is to be treated as an amount on which the payee is not liable to tax.
- (14) The company may choose to incorporate in its company tax return for the specified accounting period such relevant adjustments as are necessary for counteracting those effects of the scheme that are referable to the purpose referred to in condition C.
- (15) If, as a consequence of incorporating relevant adjustments in that company tax return, the company counteracts those effects of the scheme that are referable to the purpose referred to in condition C, the company is to be treated, so far as regards the scheme, as having complied with subsection (2).
- (16) The following are relevant adjustments—
- (a) treating all or part of a deduction allowable for corporation tax purposes as not being allowable;
  - (b) treating all or part of an amount that for corporation tax purposes may be set off against profits in an accounting period as not falling to be set off.
- (17) In this section, references to tax purposes include a reference to the purposes of any foreign tax; and foreign tax has the meaning given by section 403D of ICTA.



- (18) In this section, “company tax return” means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.

## **26 Receipts cases**

- (1) If the Commissioners for Her Majesty’s Revenue and Customs consider, on reasonable grounds, that conditions A to E are or may be satisfied in relation to a company resident in the United Kingdom, they may give the company a notice under this section.
- (2) Condition A is that a scheme makes or imposes provision (“the actual provision”) as between the company and another person (“the paying party”) by means of a transaction or series of transactions.
- (3) Condition B is that the actual provision includes the making by the paying party, by means of a transaction or series of transactions, of a payment that is a qualifying payment in relation to the company.
- (4) Condition C is that, as regards the qualifying payment made by the paying party, there is an amount that—
- (a) is available as a deduction for the purposes of the Tax Acts, or
  - (b) may be deducted or otherwise allowed in respect of the payment under the tax law of any territory outside the United Kingdom,
- and does not fall to be disregarded as described in subsection (5).
- (5) An amount is to be disregarded if or to the extent that it is, for tax purposes, set against any income arising to the paying party from the transaction or transactions forming part of the scheme.
- (6) Condition C is not to be treated as satisfied if—
- (a) the paying party is a dealer,
  - (b) in the ordinary course of his business, he incurs losses in respect of the transaction or transactions forming part of the scheme to which he is party, and
  - (c) the amount by reference to which condition C would, but for this subsection, be satisfied is an amount in respect of those losses.
- (7) In subsection (6), “dealer” means a person who is a dealer in relation to a distribution within the meaning of section 95(2) of ICTA or who would, if he were resident in the United Kingdom, be such a dealer.
- (8) Condition D is that at least part of the qualifying payment is not an amount to which subsection (9) or (10) applies.
- (9) This subsection applies to an amount that is, for the purposes of the Corporation Tax Acts—
- (a) income or gains arising to the company in the accounting period in which the qualifying payment was made in relation to the company, or
  - (b) income arising to any other company resident in the United Kingdom in a corresponding accounting period.
- (10) This subsection applies to an amount that is taken into account in determining the debits and credits to be brought into account by a company for the purposes of Chapter 2 of Part 4 of FA 1996 as respects a share in another company by virtue of section 91A or 91B of FA 1996 (shares treated as loan relationships).

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- (11) Condition E is that the company and the paying party expected on entering into the scheme that a benefit would arise as a result of condition D being satisfied (whether by reference to all or part of the qualifying payment).
- (12) A notice under this section is a notice—
- (a) informing the company of the Commissioners' view under subsection (1),
  - (b) specifying the qualifying payment by reference to which the Commissioners consider conditions B to E are or may be satisfied,
  - (c) specifying the accounting period of the company in which the payment is made, and
  - (d) informing the company that as a consequence section 27 has effect in relation to the payment.
- (13) For the purposes of this section a payment is a qualifying payment in relation to a company if it constitutes a contribution to the capital of the company.
- (14) For the purposes of this section the accounting period of a company (“company A”) corresponds to the accounting period of another company (“company B”) if at least one day of company A’s accounting period falls within company B’s accounting period.

## **27 Rule as to qualifying payment**

- (1) The following provisions of this section apply in relation to a payment that is a qualifying payment in relation to a company if—
- (a) a notice specifying that payment is given to the company under section 26, and
  - (b) when the notice is given, conditions A to E of section 26 are satisfied in relation to the company.
- (2) The company must compute (or recompute) for the purposes of corporation tax for the accounting period specified in the notice its income or chargeable gains, or its liability to corporation tax, as if the relevant part of the qualifying payment were an amount of income chargeable under Case VI of Schedule D arising to the company in that period.
- (3) The relevant part of the qualifying payment is the part by reference to which conditions C and D are satisfied; and, where conditions C and D are satisfied in relation to the whole of the qualifying payment, the relevant part is the whole of the qualifying payment.
- (4) In this section “qualifying payment” has the same meaning as in section 26.

## **28 Notices under sections 24 and 26**

- (1) Subsection (2) applies if the Commissioners for Her Majesty’s Revenue and Customs give a notice to a company under section 24 or 26 before the company has made its company tax return for the accounting period specified in the notice.
- (2) If the company makes its return for that period before the end of the period of 90 days beginning with the day on which the notice is given, it may—
- (a) make a return that disregards the notice, and
  - (b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the provision referred to in the notice.

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- (3) If a company has made a company tax return for an accounting period, the Commissioners may only give the company a notice under section 24 or 26 in relation to that period if a notice of enquiry has been given to the company in respect of its return for that period.
- (4) After any enquiries into the return for that period have been completed, the Commissioners may only give the company a notice under section 24 or 26 if the requirements in subsections (5) and (7) are satisfied.
- (5) The first requirement is that at the time the enquiries into the return were completed, the Commissioners could not have been reasonably expected, on the basis of information made available to them or to an officer of Revenue and Customs before that time, to have been aware that the circumstances were such that a notice under section 24 or 26 could have been given to the company in relation to that period.
- (6) Paragraph 44(2) and (3) of Schedule 18 to FA 1998 (information made available) applies for the purposes of subsection (5) as it applies for the purposes of paragraph 44(1).
- (7) The second requirement is that—
  - (a) the company was requested to produce or provide information during an enquiry into the return for that period, and
  - (b) if the company had duly complied with the request, the Commissioners could reasonably have been expected to give the company a notice under section 24 or 26 in relation to that period.
- (8) If a company is given a notice under section 24 or 26 in relation to an accounting period after having made a company tax return for that period, the company may amend the return for the purpose of complying with the provision referred to in the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.
- (9) If the notice under section 24 or 26 is given to the company after it has been given a notice of enquiry in respect of its return for the period, no closure notice may be given in relation to the company's tax return until—
  - (a) the end of the period of 90 days beginning with the day on which the notice under section 24 or 26 is given, or
  - (b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.
- (10) If the notice under section 24 or 26 is given to the company after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—
  - (a) the end of the period of 90 days beginning with the day on which the notice under section 24 or 26 is given, or
  - (b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.
- (11) Subsections (2)(b) and (8) do not prevent a company tax return for a period becoming incorrect if—
  - (a) a notice under section 24 or 26 is given to the company in relation to that period,

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- (b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the provision referred to in the notice, and
- (c) the return ought to have been so amended.

(12) In this section—

“closure notice” means a notice under paragraph 32 of Schedule 18 to FA 1998;

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

“discovery assessment” means an assessment under paragraph 41 of Schedule 18 to FA 1998;

“notice of enquiry” means a notice under paragraph 24 of Schedule 18 to FA 1998.

## **29 Amendments relating to company tax returns**

- (1) In Schedule 18 to FA 1998 (company tax returns, assessments, etc), in paragraph 25(1) (scope of enquiry) after “relief” insert “or a notice under section 24 or 26 of the Finance (No. 2) Act 2005 (avoidance involving tax arbitrage)”.
- (2) In paragraph 42 of that Schedule (restrictions on power to make discovery assessment etc), in sub-paragraph (2A), after “1988” insert “or section 24 or 26 of the Finance (No. 2) Act 2005”.

## **30 Interpretation**

(1) For the purposes of this Chapter—

- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
- (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
- (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
  - (i) would not have been entered into independently of the other or others, or
  - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(2) For the purposes of this Chapter, a scheme achieves a UK tax advantage for a person if in consequence of the scheme the person is in a position to obtain, or has obtained—

- (a) a relief or increased relief from income tax or corporation tax,
- (b) a repayment or increased repayment of income tax or corporation tax, or
- (c) the avoidance or reduction of a charge to income tax or corporation tax.

(3) In subsection (2)(a) the reference to relief includes a reference to a tax credit.

(4) For the purposes of subsection (2)(c) avoidance or reduction may in particular be effected by—

- (a) receipts accruing in such a way that the recipient does not pay or bear tax on them, or
- (b) a deduction in computing profits or gains.

### **31 Commencement**

- (1) The deduction cases provisions have effect in relation to accounting periods of a company beginning on or after 16th March 2005.
- (2) Where an accounting period of a company begins before, and ends on or after 16th March 2005, it shall be assumed for the purposes of the deduction cases provisions (and subsection (1) of this section) that that accounting period (“the straddling period”) consists of two separate accounting periods—
  - (a) the first beginning with the straddling period and ending with 15th March 2005, and
  - (b) the second beginning with 16th March 2005 and ending with the straddling period,and the company’s profits and losses shall be computed accordingly for tax purposes.
- (3) The deduction cases provisions do not have effect so far as regards a transaction to which a company is party on 16th March 2005 and which on that date forms part of a scheme, if—
  - (a) the company is not on 16th March 2005 connected with a person who is on that date also party to, or concerned in, the scheme, and
  - (b) the scheme ceases to exist before 31st August 2005.

Section 839 of ICTA applies for the purposes of this subsection.

- (4) The receipts cases provisions have effect in relation to any contribution to the capital of a company resident in the United Kingdom that is made on or after 16th March 2005.
- (5) In this section—
  - “the deduction cases provisions” means—
    - (a) sections 24 and 25 and Schedule 3, and
    - (b) sections 28 to 30 so far as relating to the provisions in paragraph (a);
  - “the receipts cases provisions” means—
    - (a) sections 26 and 27, and
    - (b) sections 28 to 30 so far as relating to the provisions in paragraph (a).

## **CHAPTER 5**

### **CHARGEABLE GAINS**

#### *Residence, location of assets etc*

### **32 Temporary non-residents**

- (1) Section 10A of TCGA 1992 is amended as follows.
- (2) In subsection (3) (certain gains or losses to be excluded from being treated by virtue of subsection (2) as accruing to the taxpayer in year of return)—

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- (a) in paragraph (a), for “he was neither resident nor ordinarily resident in the United Kingdom” substitute—
    - “(i) he was neither resident nor ordinarily resident in the United Kingdom, or
    - (ii) he was resident or ordinarily resident in the United Kingdom but was Treaty non-resident;”;
  - (b) in paragraph (d), after “152(1)(b)” insert “, 153(1)(b)”.
- (3) In subsection (8) (definitions) in the definition of “relevant disposal”, after “United Kingdom” insert “and was not Treaty non-resident”.
- (4) For subsection (9) substitute—
- “(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment—
- (a) if, during any part of that year of assessment, he is resident in the United Kingdom and not Treaty non-resident, or
  - (b) if he is ordinarily resident in the United Kingdom during that year of assessment, unless he is Treaty non-resident during that year of assessment.
- (9A) For the purposes of this section an individual is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.
- (9B) Where this section applies in the case of any individual in circumstances in which one or more intervening years would, but for his being Treaty non-resident during some or all of that year or those years, not be an intervening year, this section shall have effect in the taxpayer’s case—
- (a) as if subsection (2)(a) above did not apply in the case of any amount treated by virtue of section 87 or 89(2) as an amount of chargeable gains accruing to the taxpayer in any such intervening year, and
  - (b) as if any such intervening year were not an intervening year for the purposes of subsections (2)(b) and (c) and (6) above.”.
- (5) After subsection (9B) (as inserted by subsection (4) above) insert—
- “(9C) Nothing in any double taxation relief arrangements shall be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any of the chargeable gains treated by virtue of subsection (2)(a) above as accruing to the taxpayer in the year of return (or as preventing a charge to that tax from arising as a result).”.
- (6) Omit subsection (10) (section to be without prejudice to right to claim relief under double taxation relief arrangements).
- (7) The amendments in subsections (2)(a), (4), (5) and (6) have effect—
- (a) in any case in which the year of departure is, or (on the assumption that the amendment in subsection (4) had always had effect) would be, the year 2005-06 or a subsequent year of assessment; and
  - (b) in any case in which—
    - (i) the year of departure is, or (on that assumption) would be, the year 2004-05, and

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- (ii) at a time in that year on or after 16th March 2005, the taxpayer was resident or ordinarily resident in the United Kingdom and was not Treaty non-resident (within the meaning given by section 10A(9A) of TCGA 1992, as inserted by subsection (4)).
- (8) The amendment in subsection (2)(b) has effect in relation to relevant disposals made on or after 16th March 2005.
- (9) The amendment in subsection (3) has effect for determining whether a disposal of an asset is a relevant disposal for the purposes of section 10A of TCGA 1992 in any case in which the person making the disposal acquired the asset on or after 16th March 2005.

### **33 Trustees both resident and non-resident in a year of assessment**

- (1) After section 83 of TCGA 1992 insert—

#### **“83A Trustees both resident and non-resident in a year of assessment**

- (1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—
    - (a) are within the charge to capital gains tax in that year of assessment, but
    - (b) are non-UK resident at the time of the disposal.
  - (2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.
  - (3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—
    - (a) if, during any part of that year of assessment, they are resident in the United Kingdom and not Treaty non-resident, or
    - (b) if they are ordinarily resident in the United Kingdom during that year of assessment, unless they are Treaty non-resident during that year of assessment.
  - (4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—
    - (a) they are neither resident nor ordinarily resident in the United Kingdom, or
    - (b) they are resident or ordinarily resident in the United Kingdom but are Treaty non-resident.
  - (5) For the purposes of this section the trustees of a settlement are Treaty non-resident at any time if, at that time, they fall to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.”
- (2) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

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### **34 Location of assets etc**

Schedule 4 (which makes provision in relation to the situation of assets for the purposes of TCGA 1992 and which makes minor amendments in that Act in relation to non-resident companies with United Kingdom permanent establishments) has effect.

#### *Miscellaneous*

### **35 Exercise of options etc**

Schedule 5 (which makes provision, for the purposes of the taxation of chargeable gains, in relation to options) has effect.

### **36 Notional transfers within a group**

- (1) Section 171A of TCGA 1992 (notional transfers within a group) is amended as follows.
- (2) After subsection (3) insert—
  - “(3ZA) In a case where B—
    - (a) is not resident in the United Kingdom, but
    - (b) is carrying on a trade in the United Kingdom through a permanent establishment there,
 the asset or part deemed to be transferred to B by A is to be treated for the purposes of subsections (2)(c) and (3) above as having been acquired by B for use by or for the purposes of the permanent establishment; but that shall not be taken to affect the question whether or not the asset or part is situated in the United Kingdom at any time.”
- (3) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

## **CHAPTER 6**

### MISCELLANEOUS

#### *Accounting practice and related matters*

### **37 Accounting practice and related matters**

Schedule 6 (accounting practice and related matters) has effect.

#### *Financial avoidance etc*

### **38 Charges on income for the purposes of corporation tax**

- (1) Section 338A of ICTA (meaning of “charges on income” for the purposes of corporation tax) is amended as follows.



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- (2) In subsection (2) (what are charges on income) paragraph (a) (annuities or other annual payments that meet the conditions in section 338B) shall cease to have effect.
- (3) In section 125(1) of ICTA (annual payments for non-taxable consideration) for “income tax,” substitute “income tax and”.
- (4) In section 434A(2)(a) of ICTA (loss resulting to insurance company from computation in accordance with Case I of Schedule D: reduction by specified amounts) omit subparagraph (i) (which relates to charges on income).
- (5) The side-note to section 494 of ICTA (charges on income) becomes “Loan relationships etc.”.
- (6) The amendment made by subsection (4) has effect for accounting periods beginning on or after 1st April 2004.
- (7) The other amendments made by this section have effect in relation to payments made on or after the commencement date in respect of annuities or other annual payments.
- (8) Where—
  - (a) an accounting period of a company begins before, and ends on or after, the commencement date,
  - (b) a payment in respect of an annuity or other annual payment is made by the company in that period but before the commencement date, and
  - (c) the payment is deductible as a charge on income for the purposes of corporation tax,subsection (9) applies.
- (9) In any such case, so much of any amount as represents that payment—
  - (a) is not deductible under section 75 of ICTA (expenses of management), and
  - (b) is not to be brought into account under section 76 of that Act (expenses of insurance companies) as expenses payable,for that or any subsequent accounting period.
- (10) Subsection (12) applies in any case where—
  - (a) a payment in respect of an annuity or other annual payment is made by a company on or after the commencement date, and
  - (b) the condition in subsection (11) is satisfied.
- (11) The condition is that the payment represents an amount which (apart from subsection (12))—
  - (a) would not be deductible under section 75 of ICTA, or
  - (b) would not fall to be brought into account under section 76 of that Act,by reason only of section 337A(1)(b) of that Act (company’s income from any source to be computed without any deduction in respect of charges on income) as it applies by virtue of section 338A(2)(a) of that Act.
- (12) In any such case, the amount represented by the payment—
  - (a) is deductible under section 75 of ICTA, or
  - (b) falls to be brought into account under section 76 of that Act as expenses payable,for the accounting period in which the payment is made.

(13) In this section “the commencement date” means 16th March 2005.

### **39 Avoidance involving financial arrangements**

Schedule 7 (which makes provision in relation to tax avoidance involving financial arrangements) has effect.

#### *Financing of companies etc*

### **40 Transfer pricing and loan relationships**

Schedule 8 (which amends Schedule 28AA to ICTA and Schedule 9 to FA 1996) has effect.

#### *Intangible fixed assets*

### **41 Intangible fixed assets**

(1) Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as set out in subsections (2) to (4).

(2) In paragraph 92 (transfer between company and related party treated as being at market value)—

- (a) in sub-paragraph (1), for “the following two exceptions” substitute “the following four exceptions”;
- (b) after sub-paragraph (4) insert—

“(4A) The third exception is where—

- (a) the asset is transferred from the company at less than its market value, or to the company at more than its market value,
- (b) the related party—
  - (i) is not a company, or
  - (ii) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or (as the case may be) immediately before the transfer from it,

and

- (c) by virtue of any provision of—
  - (i) section 209 of the Taxes Act 1988 (meaning of “distribution”), or
  - (ii) Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: earnings and benefits etc treated as earnings),

the transfer gives rise (or would give rise but for sub-paragraph (1)) to an amount to be taken into account in computing any person’s income, profits or losses for tax purposes.

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- (4B) Where the third exception applies, sub-paragraph (1) does not apply, in relation to the computation mentioned in sub-paragraph (4A)(c), for the purposes of any such provision as is mentioned there.
- (4C) The fourth exception is where—
- (a) the asset is transferred to the company, and
  - (b) on a claim for relief under section 165 of the Taxation of Chargeable Gains Act 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under subsection (4)(a) of that section.
- (4D) Where the fourth exception applies—
- (a) the transfer is treated for the purposes of this Schedule as being at market value less the amount of the reduction;
  - (b) all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made (notwithstanding any time limit on the making of an assessment or the amendment of a return).”.
- (3) In paragraph 95 (meaning of “related party”) for Case Three substitute—
- “Case Three*
- C is a close company and P is, or is an associate of—
- (a) a participator in C, or
  - (b) a participator in a company that has control of, or holds a major interest in, C.”.
- (4) In paragraph 132 (roll-over relief: transitory interaction with relief on replacement of business asset), in sub-paragraph (5) (disapplication for certain corporation tax purposes of Classes 4 to 7 in section 155 of TCGA 1992)—
- (a) for “4 to 7” substitute “4 to 7A”;
  - (b) for “(goodwill and various types of quota)” substitute “(goodwill and certain other intangible assets)”.
- (5) In section 86(2) of FA 1993 (roll-over relief: power to amend section 155 of TCGA 1992 by order) for the words after “may make such consequential amendments” substitute
- “of—
- (a) Schedule 7AB to the Taxation of Chargeable Gains Act 1992, or
  - (b) paragraph 132 of Schedule 29 to the Finance Act 2002,
- as appear to the Treasury to be appropriate.”.
- (6) The amendments made by subsection (2) have effect in relation to any transfer of an asset made on or after 16th March 2005.
- (7) The amendment made by subsection (3) has effect, for the purposes of paragraph 92 of Schedule 29 to FA 2002 as it applies otherwise than for determining the debits or credits to be brought into account under that Schedule, in relation to any transfer of an asset made on or after 16th March 2005.

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- (8) That amendment has effect, for all other purposes of that Schedule, in relation to the debits or credits to be brought into account for accounting periods beginning on or after 16th March 2005 (and, in relation to the debits or credits to be brought into account for any such period, shall be deemed always to have had effect).
- (9) An accounting period beginning before, and ending on or after, that date is treated for the purposes of subsection (8) as if so much of that period as falls before that date, and so much of that period as falls on or after that date, were separate accounting periods.
- (10) The amendments made by subsection (4) have effect in relation to any such acquisition as is referred to in paragraph 132(5) of Schedule 29 to FA 2002 made on or after 22nd March 2005.

*Insurance companies etc*

**42 Insurance companies etc**

Schedule 9 (which makes provision about insurance companies etc) has effect.

*International matters*

**43 Implementation of the amended Parent/Subsidiary Directive**

- (1) Section 801 of ICTA (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.
- (2) After subsection (5) (meaning of one company being related to another) insert—
  - “(5A) For the purposes of subsections (2) and (3) above (including any determination of the extent to which underlying tax paid by the third, fourth or subsequent company in question would be taken into account under this Part if the conditions specified for the purpose in subsection (2) above were satisfied) a company is also related to another company if that other company—
    - (a) controls directly or indirectly, or
    - (b) is a subsidiary of a company which controls directly or indirectly, not less than 10% of the ordinary share capital of the first-mentioned company.”.
- (3) The amendment made by this section has effect where the dividend mentioned in section 799(1) of ICTA is paid on or after 1st January 2005.

**44 Territories with a lower level of taxation: reduction of amount of local tax**

- (1) Section 750 of ICTA (controlled foreign companies: territories with a lower level of taxation) is amended as follows.
- (2) In subsection (1), after “if” insert “, after giving effect to subsections (1A) and (1B) below,”.
- (3) After subsection (1) insert—
  - “(1A) If in the case of that accounting period there is any income, or any income and any expenditure, of the company—

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- (a) which is brought into account in determining the profits of the company in respect of which tax is paid under the law of that territory, but
- (b) which does not also fall to be brought into account in determining the chargeable profits of the company,

the local tax shall be treated for the purposes of this Chapter as reduced to what it would have been had that income and any such expenditure not been so brought into account.

(1B) If—

- (a) under the law of that territory any tax (“the company’s tax”) falls to be paid by the company in respect of profits of the company arising in that accounting period,
- (b) under that law, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the company, and
- (c) that payment or repayment is directly or indirectly in respect of the company’s tax,

the local tax shall be treated for the purposes of this Chapter as reduced (or further reduced) by the amount of that payment or repayment.”.

- (4) The amendments made by this section have effect in relation to accounting periods of companies resident outside the United Kingdom beginning on or after 2nd December 2004.
- (5) Where an accounting period of a company resident outside the United Kingdom—
  - (a) would, without amendment, have ended on or after 2nd December 2004, but
  - (b) is amended on or after that date so as to end before that date,an accounting period of the company shall be deemed for the purposes of Chapter 4 of Part 17 of ICTA to have ended with 1st December 2004.
- (6) In this section “accounting period” has the same meaning as in Chapter 4 of Part 17 of ICTA (see section 751).

### *Miscellaneous*

#### **45 Lloyd’s underwriters: assessment and collection of tax**

- (1) Omit section 173 of, and Schedule 19 to, FA 1993 (Lloyd’s underwriters: assessment and collection of tax).
- (2) In section 182 of that Act (regulations) in subsection (1)(a) (power of Commissioners for Her Majesty’s Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 171 of FA 1993, so far as not provided for by Schedule 19 to that Act) omit “(so far as not provided for by Schedule 19 to this Act)”.
- (3) In that section, at the end insert—
  - “(6) Any power to make regulations conferred by this section includes power to make—
    - (a) different provision for different cases or different purposes, and
    - (b) incidental, supplemental or transitional provision and savings.”.

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

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- (4) Omit section 221 of FA 1994 (Lloyd’s underwriters: corporations etc: assessment and collection of tax).
- (5) Renumber section 229 of that Act (regulations) as subsection (1) of that section.
- (6) In subsection (1) of that section (as amended by subsection (5) above), in paragraph (a) (power of Commissioners for Her Majesty’s Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 219 of FA 1994, so far as not provided for by Schedule 19 to FA 1993 as applied by section 221 of FA 1994) omit “(so far as not provided for by Schedule 19 to the 1993 Act as applied by section 221 above)”.
- (7) In that section, at the end insert—
  - “(2) Any power to make regulations conferred by this section includes power to make—
    - (a) different provision for different cases or different purposes, and
    - (b) incidental, supplemental or transitional provision and savings.”
- (8) For the purpose of enabling the making of any regulations under—
  - (a) section 182(1)(a) of FA 1993 (as amended by subsection (2)), or
  - (b) section 229(1)(a) of FA 1994 (as amended by subsection (6)),
 subsections (1) to (7) come into force on the day on which this Act is passed.
- (9) Subject to that, those subsections come into force in accordance with provision made by the Treasury by order.
- (10) Section 828(3) of ICTA shall not apply in relation to an order under subsection (9).
- (11) The Commissioners for Her Majesty’s Revenue and Customs may by regulations make such amendments, repeals or revocations in any enactment (including an enactment amended by this section) as appear to them to be appropriate in consequence of any one or more of the following—
  - (a) any amendment made by this section;
  - (b) the exercise by them of the power in section 182(1)(a) of FA 1993 (as amended by subsection (2));
  - (c) the exercise by them of the power in section 229(1)(a) of FA 1994 (as amended by subsection (6)).
- (12) Any power conferred by this section to make an order or regulations includes power to make—
  - (a) different provision for different cases or different purposes, and
  - (b) incidental, supplemental or transitional provision and savings.
- (13) 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).

#### **46 Energy Act 2004 and Health Protection Agency Act 2004**

- (1) This section provides for certain enactments to cease to have effect which relate to—
  - (a) the United Kingdom Atomic Energy Authority (“UKAEA”),

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- (b) the National Radiological Protection Board (“NRPB”), or
  - (c) pension schemes run by UKAEA.
- (2) In ICTA the following provisions shall cease to have effect—
- (a) section 349B(3)(g) (no deduction of tax from certain payments to UKAEA);
  - (b) section 349B(3)(h) (no deduction of tax from certain payments to NRPB);
  - (c) section 512(1) and (3) (certain exemptions from income tax and corporation tax for UKAEA and NRPB);
  - (d) section 512(2) (treatment of certain income of pension schemes run by UKAEA).
- (3) In section 271(7) of TCGA 1992 (miscellaneous exemptions from tax in respect of chargeable gains)—
- (a) for “Memorial Fund, the” substitute “Memorial Fund and the”;
  - (b) omit “, the United Kingdom Atomic Energy Authority”;
  - (c) omit “and the National Radiological Protection Board”;
  - (d) omit from “; and for the purposes” to the end of the subsection (treatment of gains accruing to pension schemes run by UKAEA).
- (4) In subsection (2)—
- (a) paragraph (a) has effect in relation to payments made on or after 1st April 2005;
  - (b) paragraph (b) has effect in relation to payments made after 1st April 2005;
  - (c) paragraph (c), so far as relating to UKAEA, has effect on and after 1st April 2005;
  - (d) paragraph (c), so far as relating to NRPB, has effect after 1st April 2005;
  - (e) paragraph (d) has effect in relation to income arising on or after 1st April 2005.
- (5) In subsection (3)—
- (a) paragraphs (a) and (c) have effect in relation to gains accruing after 1st April 2005;
  - (b) paragraphs (b) and (d) have effect in relation to gains accruing on or after 1st April 2005.
- (6) The repeal of subsection (3)(g) of section 349B of ICTA does not affect the application of any other provision of that section in relation to UKAEA.
- (7) Nothing in this section affects—
- (a) any accounting period of UKAEA ending before 1st April 2005, or
  - (b) any accounting period of NRPB ending on or before 1st April 2005.