



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 1

#### OVERVIEW

#### 1 Overview of Income Tax Acts

- (1) The following Acts make provision about income tax—
  - (a) ITEPA 2003 (which is about charges to tax on employment income, pension income and social security income),
  - (b) ITTOIA 2005 (which is about charges to tax on trading income, property income, savings and investment income and some other miscellaneous income), and
  - (c) this Act (which contains the other main provisions about income tax).
- (2) There are also provisions about income tax elsewhere: see in particular—
  - (a) Part 18 of ICTA (double taxation relief),
  - (b) CAA 2001 (allowances for capital expenditure), and
  - (c) Part 4 of FA 2004 (pension schemes etc).
- (3) Schedule 1 to the Interpretation Act 1978 (c. 30) defines “the Income Tax Acts” (as all enactments relating to income tax).

#### 2 Overview of Act

- (1) This Act has 17 Parts.
- (2) Part 2 contains basic provisions about income tax including—
  - (a) provision about the annual nature of income tax (Chapter 1),
  - (b) the rates at which income tax is charged (Chapter 2), and
  - (c) the calculation of income tax liability (Chapter 3).
- (3) Part 3 is about taxpayers' personal reliefs including—
  - (a) personal allowances (Chapter 2),

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- (b) blind persons' allowances (Chapter 2), and
  - (c) tax reductions for married couples and civil partners (Chapter 3).
- (4) Part 4 is about loss relief including relief for—
  - (a) trade losses (Chapters 2 and 3),
  - (b) losses from property businesses (Chapter 4),
  - (c) losses in an employment or office (Chapter 5),
  - (d) losses on disposal of shares (Chapter 6), and
  - (e) losses from miscellaneous transactions (Chapter 7).
- (5) Part 5 is about relief under the enterprise investment scheme.
- (6) Part 6 is about—
  - (a) relief for investment in venture capital trusts, and
  - (b) other matters relating to venture capital trusts.
- (7) Part 7 is about community investment tax relief.
- (8) Part 8 is about a variety of reliefs including relief for—
  - (a) interest payments (Chapter 1),
  - (b) gifts to charity including gift aid (Chapters 2 and 3),
  - (c) annual payments and patent royalties (Chapter 4), and
  - (d) maintenance payments (Chapter 5).
- (9) Part 9 contains special rules about settlements and trustees including—
  - (a) general provision about settlements and trustees (Chapter 2),
  - (b) special income tax rates for trusts (Chapters 3, 4, 5 and 6),
  - (c) rules about trustees' expenses (Chapters 4 and 8),
  - (d) rules about trustees' discretionary payments (Chapter 7),
  - (e) rules about unauthorised unit trusts (Chapter 9), and
  - (f) rules about heritage maintenance settlements (Chapter 10).
- (10) Part 10 contains special rules about charitable trusts etc.
- (11) Part 11 is about manufactured payments and repos.
- (12) Part 12 is about accrued income profits.
- (13) Part 13 is about tax avoidance in relation to—
  - (a) transactions in securities (Chapter 1),
  - (b) transfers of assets abroad (Chapter 2),
  - (c) transactions in land (Chapter 3),
  - (d) sales of occupation income (Chapter 4), and
  - (e) trade losses (Chapter 5).
- (14) Part 14 deals with some miscellaneous rules about income tax liability, including—
  - (a) limits on liability to income tax for non-UK residents (Chapter 1),
  - (b) special rules about residence (Chapter 2), and
  - (c) rules about jointly held property (Chapter 3).
- (15) Part 15 is about the deduction of income tax at source.

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(16) Part 16 contains definitions which apply for the purposes of the Income Tax Acts and other general provisions which apply for the purposes of those Acts.

(17) Part 17—

- (a) contains provisions to be used in interpreting this Act,
- (b) introduces Schedule 1 (minor and consequential amendments),
- (c) introduces Schedule 2 (transitional provisions and savings),
- (d) introduces Schedule 3 (repeals and revocations, including of spent enactments),
- (e) introduces Schedule 4 (index of defined expressions that apply for the purposes of this Act),
- (f) confers powers on the Treasury to make orders, and
- (g) makes provision about the coming into force of this Act.

## PART 2

### BASIC PROVISIONS

#### CHAPTER 1

##### CHARGES TO INCOME TAX

### 3 Overview of charges to income tax

(1) Income tax is charged under—

- (a) Part 2 of ITEPA 2003 (employment income),
- (b) Part 9 of ITEPA 2003 (pension income),
- (c) Part 10 of ITEPA 2003 (social security income),
- (d) Part 2 of ITTOIA 2005 (trading income),
- (e) Part 3 of ITTOIA 2005 (property income),
- (f) Part 4 of ITTOIA 2005 (savings and investment income), and
- (g) Part 5 of ITTOIA 2005 (miscellaneous income).

(2) Income tax is also charged under other provisions, including—

- (a) Chapter 5 of Part 4 of FA 2004 (registered pension schemes: tax charges),
- (b) section 7 of F(No.2)A 2005 (social security pension lump sums),
- (c) Part 10 of this Act (special rules about charitable trusts etc),
- (d) Chapter 2 of Part 12 of this Act (accrued income profits), and
- (e) Part 13 of this Act (tax avoidance).

### 4 Income tax an annual tax

(1) Income tax is charged for a year only if an Act so provides.

(2) A year for which income tax is charged is called a “tax year”.

(3) A tax year begins on 6 April and ends on the following 5 April.

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- (4) “The tax year 2007-08” means the tax year beginning on 6 April 2007 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way).
- (5) Every assessment to income tax must be made for a tax year.
- (6) Subsection (5) is subject to Chapter 15 of Part 15 (by virtue of which an assessment may relate to a return period).

## **5 Income tax and companies**

- (1) Income tax is not charged on income of a company so far as the company is within the charge to corporation tax in respect of the income.
- (2) See in particular sections 6(2) and 11(1) of ICTA for the circumstances in which a company is within the charge to corporation tax in respect of its income.

## **CHAPTER 2**

### RATES AT WHICH INCOME TAX IS CHARGED

#### *The rates*

## **6 The starting rate, basic rate and higher rate**

- (1) The main rates at which income tax is charged are—
  - (a) the starting rate,
  - (b) the basic rate, and
  - (c) the higher rate.
- (2) The starting rate, basic rate and higher rate for a tax year are the rates determined as such by Parliament for the tax year.
- (3) For other rates at which income tax is charged see—
  - (a) section 7 (savings rate),
  - (b) section 8 (dividend ordinary rate and dividend upper rate), and
  - (c) section 9 (trust rate and dividend trust rate).

## **7 The savings rate**

The savings rate is 20%.

## **8 The dividend ordinary rate and dividend upper rate**

- (1) The dividend ordinary rate is 10%.
- (2) The dividend upper rate is 32.5%.

## **9 The trust rate and dividend trust rate**

- (1) The trust rate is 40%.



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- (2) The dividend trust rate is 32.5%.

### *Income charged at particular rates*

## **10 Income charged at the starting, basic and higher rates: individuals**

- (1) Income tax is charged at the starting rate on an individual's income up to the starting rate limit.
- (2) Income tax is charged at the basic rate on an individual's income above the starting rate limit and up to the basic rate limit.
- (3) Income tax is charged at the higher rate on an individual's income above the basic rate limit.
- (4) This section is subject to—
  - section 12 (income charged at the savings rate),
  - section 13 (income charged at the dividend ordinary and dividend upper rates: individuals), and
  - any other provisions of the Income Tax Acts which provide for income of an individual to be charged at different rates of income tax in some circumstances.
- (5) See section 20 for the starting rate limit and the basic rate limit.

## **11 Income charged at the basic rate: other persons**

- (1) Income tax is charged at the basic rate on the income of persons other than individuals.
- (2) This section is subject to—
  - section 12 (income charged at the savings rate),
  - section 14 (income charged at the dividend ordinary rate: other persons),
  - Chapters 3 to 6 of Part 9 (which provide for some income of trustees to be charged at the dividend trust rate or at the trust rate), and
  - any other provisions of the Income Tax Acts which provide for income of persons other than individuals to be charged at different rates of income tax in some circumstances.

## **12 Income charged at the savings rate**

- (1) Income tax is charged at the savings rate on a person's income which—
  - (a) is savings income, and
  - (b) would otherwise be charged at the basic rate.
- (2) This is subject to—
  - Chapters 3 to 6 of Part 9 (which provide for some income of trustees to be charged at the dividend trust rate or at the trust rate),
  - section 504(3) (treatment of income of unauthorised unit trust), and
  - any other provisions of the Income Tax Acts (apart from sections 10 and 11) which provide for income to be charged at different rates of income tax in some circumstances.

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- (3) Section 16 has effect for determining the extent to which a person's savings income would otherwise be charged at the basic rate.

### **13 Income charged at the dividend ordinary and dividend upper rates: individuals**

- (1) Income tax is charged at the dividend ordinary rate on an individual's income which—
- (a) is dividend income,
  - (b) would otherwise be charged at the starting or basic rate, and
  - (c) is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (2) Income tax is charged at the dividend upper rate on an individual's income which—
- (a) is dividend income, and
  - (b) would otherwise be charged at the higher rate.
- (3) Subsections (1) and (2) are subject to any provisions of the Income Tax Acts (apart from section 10) which provide for income to be charged at different rates of income tax in some circumstances.
- (4) Section 16 has effect for determining the extent to which an individual's dividend income would otherwise be charged at the starting, basic or higher rate.

### **14 Income charged at the dividend ordinary rate: other persons**

- (1) Income tax is charged at the dividend ordinary rate on the income of persons other than individuals which—
- (a) is dividend income,
  - (b) would otherwise be charged at the basic rate, and
  - (c) is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (2) This is subject to—
- Chapters 3 to 6 of Part 9 (which provide for some income of trustees to be charged at the dividend trust rate or at the trust rate),
  - section 504(3) (treatment of income of unauthorised unit trust), and
  - any other provisions of the Income Tax Acts (apart from section 11) which provide for income of persons other than individuals to be charged at different rates of income tax in some circumstances.

### **15 Income charged at the trust rate and the dividend trust rate**

For the circumstances in which income tax is charged at the trust rate and the dividend trust rate, see Chapters 3 to 6 of Part 9.

### **16 Savings and dividend income to be treated as highest part of total income**

- (1) This section has effect for determining the rate at which income tax would be charged on a person's savings or dividend income apart from sections 12 and 13.
- (2) It also has effect for all other income tax purposes except for the purposes of—

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- (a) section 491 (special rates not to apply to first slice of trustees' trust rate income), and
  - (b) sections 535 to 537 of ITTOIA 2005 (gains from contracts for life insurance etc: top slicing relief).
- (3) If a person has savings income but no dividend income, the savings income is treated as the highest part of the person's total income.
- (4) If a person has dividend income but no savings income, the dividend income is treated as the highest part of the person's total income.
- (5) If a person has both savings income and dividend income—
  - (a) the savings income and dividend income are together treated as the highest part of the person's total income, and
  - (b) the dividend income is treated as the higher part of that part of the person's total income.
- (6) See section 1012 for the relationship between—
  - (a) the rules in this section, and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.
- (7) References in this section to dividend income do not include dividend income which is relevant foreign income charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).

## **17 Repayment: tax paid at basic rate instead of starting or savings rate**

- (1) This section applies if income tax at the basic rate has been paid on income on which income tax is chargeable at the starting or savings rate.
- (2) If a claim is made, any necessary repayment of tax must be made.

## **18 Meaning of “savings income”**

- (1) This section applies for the purposes of the Income Tax Acts.
- (2) “Savings income” is income—
  - (a) which is within subsection (3) or (4), and
  - (b) which is not relevant foreign income charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).
- (3) Income is within this subsection if it is—
  - (a) income chargeable under Chapter 2 of Part 4 of ITTOIA 2005 (interest),
  - (b) income chargeable under Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments), other than income from annuities specified in section 718(2) of that Act (annuities purchased from certain life assurance premium payments or under wills etc),
  - (c) income chargeable under Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities), or
  - (d) income chargeable under Chapter 2 of Part 12 of this Act (accrued income profits).

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- (4) Income is within this subsection if—
- (a) it is chargeable under Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc), and
  - (b) an individual is, or personal representatives are, liable for income tax on it (under section 465 or 466 of that Act).

## 19 Meaning of “dividend income”

- (1) This section applies for the purposes of the Income Tax Acts.
- (2) “Dividend income” is income which is—
- (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
  - (b) chargeable under Chapter 4 of that Part (dividends from non-UK resident companies),
  - (c) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies),
  - (d) chargeable under Chapter 6 of that Part (release of loan to participator in close company), or
  - (e) a relevant foreign distribution chargeable under Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged).
- (3) In subsection (2) “relevant foreign distribution” means a distribution of a non-UK resident company which—
- (a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but
  - (b) would be chargeable under Chapter 3 of that Part if the company were UK resident.

### *Starting rate limit and basic rate limit*

## 20 The starting rate limit and the basic rate limit

- (1) The starting rate limit is [<sup>F1</sup>£2,320].
- (2) The basic rate limit is [<sup>F2</sup>£36,000].
- (3) The basic rate limit is increased in some circumstances: see—
- (a) section 414(2) (gift aid relief), and
  - (b) section 192(4) of FA 2004 (relief for pension contributions).

### Textual Amendments

- F1** Amount in s. 20(1) replaced (with effect in accordance with art. 2 of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2008 \(S.I. 2008/709\)](#), **art. 2(a)**
- F2** Amount in s. 20(2) replaced (with effect in accordance with art. 2 of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2008 \(S.I. 2008/709\)](#), **art. 2(b)**

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## **21 Indexation of the starting rate limit and the basic rate limit**

- (1) This section applies if the retail prices index for the September before the start of a tax year is higher than it was for the previous September.
- (2) The starting rate limit for the tax year is the amount found as follows.

### *Step 1*

Increase the starting rate limit for the previous tax year by the same percentage as the percentage increase in the retail prices index.

### *Step 2*

If the result of Step 1 is a multiple of £10, it is the starting rate limit for the tax year.

If the result of Step 1 is not a multiple of £10, round it up to the nearest amount which is a multiple of £10.

That amount is the starting rate limit for the tax year.

- (3) The basic rate limit for the tax year is the amount found as follows.

### *Step 1*

Increase the basic rate limit for the previous tax year by the same percentage as the percentage increase in the retail prices index.

### *Step 2*

If the result of Step 1 is a multiple of £100, it is the basic rate limit for the tax year.

If the result of Step 1 is not a multiple of £100, round it up to the nearest amount which is a multiple of £100.

That amount is the basic rate limit for the tax year.

- (4) Subsections (2) and (3) do not require a change to be made in the amounts deductible or repayable under PAYE regulations during the period beginning on 6 April and ending on 17 May in the tax year.
- (5) Before the start of the tax year the Treasury must make an order replacing the amounts specified in section 20 with the amounts which, as a result of subsections (2) and (3), are the starting rate limit and the basic rate limit for the tax year.

## **CHAPTER 3**

### **CALCULATION OF INCOME TAX LIABILITY**

## **22 Overview of Chapter**

- (1) This Chapter deals with the calculation of a person's income tax liability for a tax year.
- (2) But it does not deal with any income tax liability mentioned in section 32.
- (3) This Chapter needs to be read with Chapter 1 of Part 14 (limits on liability to income tax of non-UK residents).

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## **23 The calculation of income tax liability**

To find the liability of a person (“the taxpayer”) to income tax for a tax year, take the following steps. *Step 1*

Identify the amounts of income on which the taxpayer is charged to income tax for the tax year.

The sum of those amounts is “total income”.

Each of those amounts is a “component” of total income.

### *Step 2*

Deduct from the components the amount of any relief under a provision listed in relation to the taxpayer in section 24 to which the taxpayer is entitled for the tax year.

See section 25 for further provision about the deduction of those reliefs.

The sum of the amounts of the components left after this step is “net income”.

### *Step 3*

Deduct from the amounts of the components left after Step 2 any allowances to which the taxpayer is entitled for the tax year under Chapter 2 of Part 3 of this Act or section 257 or 265 of ICTA (individuals: personal allowance and blind person's allowance).

See section 25 for further provision about the deduction of those allowances.

### *Step 4*

Calculate tax at each applicable rate on the amounts of the components left after Step 3.

See Chapter 2 of this Part for the rates at which income tax is charged and the income charged at particular rates.

If the taxpayer is a trustee, see also Chapters 3 to 6 and 10 of Part 9 (special rules about settlements and trustees) for further provision about the income charged at particular rates.

### *Step 5*

Add together the amounts of tax calculated at Step 4.

### *Step 6*

Deduct from the amount of tax calculated at Step 5 any tax reductions to which the taxpayer is entitled for the tax year under a provision listed in relation to the taxpayer in section 26.

See sections 27 to 29 for further provision about the deduction of those tax reductions.

### *Step 7*

Add to the amount of tax left after Step 6 any amounts of tax for which the taxpayer is liable for the tax year under any provision listed in relation to the taxpayer in section 30.

The result is the taxpayer's liability to income tax for the tax year.

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## 24 Reliefs deductible at Step 2

(1) If the taxpayer is an individual, the provisions referred to at Step 2 of the calculation in section 23 are—

(a) the following—

section 72 (early trade losses relief),  
Chapter 6 of Part 4 (share loss relief),  
Chapter 3 of Part 8 (gifts of shares, securities and real property to charities etc),  
sections 457 and 458 of this Act or section 266(7) of ICTA (payments to trade unions or police organisations),  
section 193(4) of FA 2004 (pension schemes: relief under net pay arrangement: excess relief), and  
section 194(1) of FA 2004 (pension schemes: relief on making of claim),  
and

(b) the following—

section 64 (trade loss relief against general income),  
section 83 (carry-forward trade loss relief),  
section 89 (terminal trade loss relief),  
section 96 (post-cessation trade relief),  
section 118 (carry-forward property loss relief),  
section 120 (property loss relief against general income),  
section 125 (post-cessation property relief),  
section 128 (employment loss relief against general income),  
section 152 (loss relief against miscellaneous income),  
Chapter 1 of Part 8 (interest payments),  
Chapter 4 of Part 8 (annual payments and patent royalties),  
section 574 (manufactured dividends on UK shares: payments by non-companies),  
section 579 (manufactured interest on UK securities: payments not otherwise deductible),  
Part 2 of CAA 2001 (plant and machinery allowances), in a case where the allowance is to be given effect under section 258 of that Act (special leasing of plant and machinery),  
Part 3 of CAA 2001 (industrial buildings allowances), in a case where the allowance is to be given effect under section 355 of that Act (buildings for miners etc: carry-back of balancing allowances),  
Part 8 of CAA 2001 (patent allowances), in a case where the allowance is to be given effect under section 479 of that Act (persons having qualifying non-trade expenditure),  
section 555 of ITEPA 2003 (deduction for liabilities related to former employment),  
section 446 of ITTOIA 2005 (strips of government securities: relief for losses),  
section 454(4) of ITTOIA 2005 (listed securities held since 26 March 2003: relief for losses: persons other than trustees), and  
section 600 of ITTOIA 2005 (relief for patent expenses).

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- (2) In any other case, the provisions referred to at Step 2 of the calculation in section 23 are—
- (a) the provisions listed in subsection (1)(b), and
  - (b) section 505 (relief for trustees of unauthorised unit trust).

## **25 Reliefs and allowances deductible at Steps 2 and 3: supplementary**

- (1) This section supplements the provisions about reliefs and allowances in Steps 2 and 3 of the calculation in section 23.
- (2) At Steps 2 and 3, deduct the reliefs and allowances in the way which will result in the greatest reduction in the taxpayer's liability to income tax.
- (3) Subsection (2) is subject to—
  - section 65(2) to (4) (priority rule in relation to trade loss relief against general income),
  - section 80(2) (ring fence income),
  - section 83(3) and (4) (carry-forward trade loss relief against trade profits),
  - section 89(3) (terminal trade loss relief against trade profits),
  - section 93(2) (terminal trade loss relief and mineral extraction trade),
  - section 95(2) (foreign trades etc reliefs only against qualifying foreign income),
  - section 115(2) (restrictions on reliefs for firms exploiting films),
  - section 118(3) and (4) (carry-forward property loss relief against property business profits),
  - section 121(2) and (3) (priority rule in relation to property loss relief against general income),
  - section 129(2) to (4) (priority rule in relation to employment loss relief against general income),
  - section 133(4) (share loss relief against general income),
  - section 152(4) and (7) (loss relief against miscellaneous income),
  - sections 574(3) to (8) and 575 (manufactured dividends on UK shares: restrictions on deductions),
  - section 579(2) to (5) and 580 (manufactured interest on UK securities: restrictions on deductions),
  - section 258 of CAA 2001 (special leasing of plant or machinery),
  - section 355 of that Act (buildings for miners etc: carry-back of balancing allowances),
  - section 479 of that Act (persons having qualifying non-trade expenditure),
  - section 601 of ITTOIA 2005 (how relief for patent expenses is given), and
  - any other provision of the Income Tax Acts under which reliefs or allowances deductible at Step 2 or 3 are not permitted to be deducted from particular components of income or are required to be deducted from particular components of income or in a different order.
- (4) A relief or allowance may be deducted at Step 2 or 3 only so far as there is sufficient income from which to deduct it.
- (5) In deciding whether there is sufficient income from which to deduct a relief or allowance, reliefs and allowances already deducted at Step 2 or 3 must be taken into account.



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- (6) Nothing in Step 2 or 3 is to be read as permitting a relief or allowance to be deducted more than once.

## **26 Tax reductions**

- (1) If the taxpayer is an individual, the provisions referred to at Step 6 of the calculation in section 23 are—

- (a) the following—

Chapter 3 of Part 3 of this Act or section 257A, 257AB, 257BA or 257BB of ICTA (tax reductions for married couples and civil partners),  
Chapter 1 of Part 5 (EIS relief),  
Chapter 2 of Part 6 (VCT relief),  
Chapter 1 of Part 7 (community investment tax relief),  
section 453 (qualifying maintenance payments),  
section 459 of this Act or section 273 of ICTA (payments for benefit of family members),  
section 461 (spreading of patent royalty receipts),  
section 353(1A) of ICTA (relief for interest on loan to buy life annuity),  
section 535 of ITTOIA 2005 (top slicing relief), and  
section 539 of ITTOIA 2005 (relief for deficiencies), and

- (b) the following—

section 788 of ICTA (double taxation arrangements: relief by agreement),  
section 790(1) of ICTA (relief for foreign tax where no double taxation arrangements),  
section 401 of ITTOIA 2005 (relief: qualifying distribution after linked non-qualifying distribution), and  
sections 677 and 678 of ITTOIA 2005 (relief where foreign estates have borne UK income tax).

- (2) In any other case, the provisions referred to at Step 6 of the calculation in section 23 are—

- (a) the provisions listed in subsection (1)(b), and  
(b) section 26 of FA 2005 (trusts with vulnerable beneficiary: income tax relief).

## **27 Order of deducting tax reductions: individuals**

- (1) This section makes provision about the order in which tax reductions are to be deducted at Step 6 of the calculation in section 23, if the taxpayer is an individual.
- (2) Deduct the tax reductions in the order which will result in the greatest reduction in the taxpayer's liability to income tax for the tax year.
- (3) Subsection (2) is subject to subsections (4) to (6).
- (4) If the taxpayer is entitled to tax reductions for the tax year under more than one of the provisions listed in subsection (5), a tax reduction under a provision mentioned earlier in the list must be deducted before a tax reduction under a provision mentioned later in the list.

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- (5) The provisions are—
- Chapter 2 of Part 6 (VCT relief),
  - Chapter 1 of Part 5 (EIS relief),
  - Chapter 1 of Part 7 (community investment tax relief),
  - section 353(1A) of ICTA (relief for interest on loan to buy life annuity),
  - section 453 (qualifying maintenance payments),
  - section 459 of this Act or section 273 of ICTA (payments for benefit of family members), and
  - Chapter 3 of Part 3 of this Act or section 257A, 257AB, 257BA or 257BB of ICTA (tax reductions for married couples and civil partners).
- (6) If the taxpayer is entitled to a tax reduction under—
- (a) section 788 of ICTA (double taxation arrangements: relief by agreement), or
  - (b) section 790(1) of ICTA (relief for foreign tax where no double taxation arrangements),
- that tax reduction must be deducted after any other tax reduction to which the taxpayer is entitled for the tax year.

## **28 Order of deducting tax reductions: other persons**

- (1) This section makes provision about the order in which tax reductions are to be deducted at Step 6 of the calculation in section 23, if the taxpayer is a person other than an individual.
- (2) Deduct the tax reductions in the order which will result in the greatest reduction in the taxpayer's liability to income tax for the tax year.
- (3) Subsection (2) is subject to subsections (4) and (5).
- (4) If the taxpayer is entitled to a tax reduction under—
- (a) section 788 of ICTA (double taxation arrangements: relief by agreement), or
  - (b) section 790(1) of ICTA (relief for foreign tax where no double taxation arrangements),
- that tax reduction must be deducted after any other tax reduction to which the taxpayer is entitled for the tax year, subject to subsection (5).
- (5) If the taxpayer is a trustee and is entitled to a tax reduction under section 26 of FA 2005 (trusts with vulnerable beneficiary: income tax relief) that tax reduction must be deducted after any other tax reduction to which the taxpayer is entitled for the tax year.

## **29 Tax reductions: supplementary**

- (1) This section supplements the provisions about tax reductions in Step 6 of the calculation in section 23.
- (2) A tax reduction may be deducted at Step 6 only so far as there is sufficient tax calculated at Step 5 of the calculation from which to deduct it.
- (3) In deciding whether there is sufficient tax calculated at Step 5 from which to deduct a tax reduction, tax reductions already deducted at Step 6 must be taken into account.
- (4) Subsections (2) and (3) apply in addition to—

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- (a) [<sup>F3</sup>section 796(1), (2) and (3) of ICTA] (limits on credit for foreign tax), and
- (b) any other provision of the Income Tax Acts that limits the amount of a tax reduction.

[<sup>F4</sup>(4A) If the taxpayer is an individual, the total of the tax reductions within subsection (4B) that are deducted at Step 6 must not be greater than—

$$A - B$$

where—

A is the amount of tax calculated at Step 5, and

B is the total amount of the tax treated under section 414 (gift aid) as deducted from gifts made by the taxpayer in the tax year.

(4B) A tax reduction is within this subsection if it is under—

Chapter 1 of Part 5 (EIS relief),

Chapter 2 of Part 6 (VCT relief), or

Chapter 1 of Part 7 (community investment tax relief).

(4C) Subsection (4A) applies in addition to subsections (2) and (3).]

(5) For the purposes of this Chapter, a person is treated as being entitled to a tax reduction under section 788 of ICTA if the person is entitled to credit against income tax under double taxation arrangements.

#### Textual Amendments

**F3** Words in s. 29(4)(a) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(2\)\(a\)](#)

**F4** S. 29(4A)-(4C) inserted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(2\)\(b\)](#)

## 30 Additional tax

(1) If the taxpayer is an individual, the provisions referred to at Step 7 of the calculation in section 23 are—

section 424 (gift aid: charge to tax),

section 205 of FA 2004 (pension schemes: the short service refund lump sum charge),

section 206 of FA 2004 (pension schemes: the special lump sum death benefits charge),

section 208(2)(a) of FA 2004 (pension schemes: the unauthorised payments charge),

section 209(3)(a) of FA 2004 (pension schemes: the unauthorised payments surcharge),

section 214 of FA 2004 (pension schemes: the lifetime allowance charge),

section 227 of FA 2004 (pension schemes: the annual allowance charge), and

section 7 of F(No.2)A 2005 (social security pension lump sum).

(2) If the taxpayer is a trustee, the provision referred to at Step 7 of the calculation in section 23 is section 496 (discretionary payments by trustees: tax pool adjustment).

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### 31 Total income: supplementary

- (1) This section applies for the purposes of calculating total income.
- (2) Income from which a deduction in respect of income tax is to be made (or treated as made) at the basic or savings rate in force for a tax year is treated as income of that tax year.
- (3) If—
  - (a) a dividend is paid, or another distribution is made, in a tax year,
  - (b) a person is entitled to a tax credit in respect of the dividend or other distribution, and
  - (c) the amount or value of the dividend or other distribution is treated under section 398 of ITTOIA 2005 as increased by the amount of the tax credit,
 the amount or value as increased is treated as income of that tax year.
- (4) Subsections (2) and (3) apply even if all or part of the income, or the dividend or other distribution, accrued or will accrue in a different tax year.
- (5) An assessment that has become final and conclusive for income tax purposes for a tax year is also final and conclusive for the purposes of calculating total income.

### 32 Liability not dealt with in the calculation

The liabilities referred to in section 22(2) are income tax liability—

- under section 79(1) (capital allowances restrictions: withdrawal of relief),
- under section 81(6) (dealings in commodity futures: withdrawal of relief),
- under [F5section 103B(5)] (non-active partners: withdrawal of relief),
- under section 235 (withdrawal or reduction of EIS relief),
- under sections 266 to 270 (withdrawal or reduction of VCT relief),
- under section 372 (withdrawal or reduction of CITR),
- under section 512 (heritage maintenance settlements: application of property for non-heritage purposes),
- under Chapter 1 of Part 13 (transactions in securities),
- under regulations made under section 918(4) (foreign payers of manufactured dividends: Real Estate Investment Trusts: the reverse charge),
- under section 920 or 923 (foreign payers of manufactured interest or manufactured overseas dividends: the reverse charge),
- under Chapter 15, 16 or 17 of Part 15 (deduction of tax at source: collection mechanisms),
- under section 804(5B)(a) of ICTA (recovery of excess credit for overseas tax),
- under paragraph 11(3) of Schedule 20 to FA 1994 (recovery of excess credit for overseas tax: changes for facilitating self-assessment),
- of the person who is (or persons who are) the responsible person in relation to an employer-financed retirement benefits scheme under section 394(2) of ITEPA 2003,
- under Chapter 5 of Part 4 of FA 2004 (registered pension schemes: tax charges), except any liability under a provision mentioned in section 30(1), and
- under section 682(4) of ITTOIA 2005 (assessments, adjustments and claims after the administration period), so far as the liability represents a tax reduction given effect at Step 6 of the calculation in section 23.

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#### Textual Amendments

**F5** Words in s. 32 substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 5, 21](#)

## PART 3

### PERSONAL RELIEFS

#### CHAPTER 1

##### INTRODUCTION

### 33 Overview of Part

- (1) This Part provides for personal reliefs.
- (2) Chapter 2 provides for entitlement to a personal allowance and a blind person's allowance.
- (3) Chapter 3 provides for tax reductions for married couples and civil partners.
- (4) Chapter 4 contains provision applicable for the purposes of Chapters 2 and 3, in particular—
  - (a) requirements about residence etc of claimants to allowances under Chapter 2 or tax reductions under Chapter 3, and
  - (b) indexation of the amounts of those allowances and tax reductions.

#### CHAPTER 2

##### PERSONAL ALLOWANCE AND BLIND PERSON'S ALLOWANCE

##### *Introduction*

### 34 Allowances under Chapter

- (1) In this Chapter—
  - (a) sections 35, 36 and 37 deal with entitlement to a personal allowance,
  - (b) section 38 deals with entitlement to a blind person's allowance, and
  - (c) section 39 deals with the transfer of part of a blind person's allowance to a spouse or civil partner.
- (2) An allowance under this Chapter is given effect at Step 3 of the calculation in section 23.

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## Personal allowances

### 35 Personal allowance for those aged under 65

An individual who makes a claim is entitled to a personal allowance of [<sup>F6</sup>£5,435] for a tax year if the individual—

- (a) is under the age of 65 throughout the tax year, and
- (b) meets the requirements of section 56 (residence etc).

#### Textual Amendments

- F6** Amount in s. 35 substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), [art. 2\(2\)](#)

### 36 Personal allowance for those aged 65 to 74

(1) An individual who makes a claim is entitled to a personal allowance of [<sup>F7</sup>£7,850] for a tax year if the individual—

- (a) is 65 or over at some time in the tax year, but under 75 throughout the tax year, and
- (b) meets the requirements of section 56 (residence etc).

(2) For an individual whose adjusted net income for the tax year exceeds [<sup>F8</sup>£21,800], the allowance under subsection (1)—

- (a) is reduced by half the excess, but
- (b) is not reduced below the amount of a personal allowance under section 35.

(3) For the meaning of “adjusted net income” see section 58.

#### Textual Amendments

- F7** Amount in s. 36(1) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), [art. 2\(3\)](#)
- F8** Amount in s. 36(2) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), [art. 2\(9\)](#)

### 37 Personal allowance for those aged 75 and over

(1) An individual who makes a claim is entitled to a personal allowance of [<sup>F9</sup>£8,000] for a tax year if the individual—

- (a) is 75 or over at some time in the tax year, and
- (b) meets the requirements of section 56 (residence etc).

(2) For an individual whose adjusted net income for the tax year exceeds [<sup>F10</sup>£21,800], the allowance under subsection (1)—

- (a) is reduced by half the excess, but
- (b) is not reduced below the amount of a personal allowance under section 35.

(3) For the meaning of “adjusted net income” see section 58.

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#### Textual Amendments

- F9** Amount in s. 37(1) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(4)**
- F10** Amount in s. 37(2) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(9)**

### *Blind person's allowance*

## 38 Blind person's allowance

- (1) An individual who makes a claim is entitled to a blind person's allowance of [<sup>F11</sup>£1,800] for a tax year if the individual—
- (a) meets the first or second condition for the whole or part of the tax year, and
  - (b) meets the requirements of section 56 (residence etc).
- (2) The first condition is that the individual is registered as a blind person in a register kept under section 29 of the National Assistance Act 1948 (c. 29) (registers kept by local authorities in England and Wales).
- (3) The second condition is that—
- (a) the individual is ordinarily resident in Scotland or Northern Ireland, and
  - (b) because of the individual's blindness, the individual is unable to do any work for which eyesight is essential.
- (4) If an individual who is entitled to a blind person's allowance for a particular tax year—
- (a) became registered as a blind person in a register kept under section 29 of the National Assistance Act 1948 in the tax year, but
  - (b) obtained the evidence of blindness on the basis of which the registration was made in the preceding tax year,
- the individual is treated as having met the first condition for the whole of the preceding tax year.

#### Textual Amendments

- F11** Amount in s. 38(1) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(5)**

## 39 Transfer of part of blind person's allowance to a spouse or civil partner

- (1) This section applies to an individual who is entitled to a blind person's allowance under section 38 for a tax year if—
- (a) the individual is a person whose spouse or civil partner is living with the individual for the whole or any part of the tax year, and
  - (b) the spouse or civil partner meets the requirements of section 56 (residence etc).
- (2) If—
- (a) the allowance exceeds the individual's remaining relieviable income,

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- (b) the individual makes an election, and
  - (c) the individual's spouse or civil partner makes a claim,
- the individual's spouse or civil partner is entitled to an allowance for the tax year equal to the amount of the excess.
- (3) The individual's remaining relievable income is the amount found by—
- (a) taking the amount of the individual's net income, and
  - (b) subtracting any personal allowance to which the individual is entitled for the tax year.

#### **40 Election for transfer of allowance under section 39**

- (1) An election under section 39—
- (a) must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year to which it relates, and
  - (b) cannot be withdrawn.
- (2) If an individual makes an election for a tax year under section 39 the individual is treated as also giving notice under section 51(4) that section 51(1) (tax reductions for married couples and civil partners: transfer of unused relief) is to apply for the tax year.

#### *Supplementary*

#### **41 Allowances in year of death**

- (1) Any allowance to which an individual is entitled under this Chapter for any tax year, including the tax year in which the individual dies, is given in full.
- (2) If an individual was due to reach the age of 65 in a tax year, but dies in the tax year before reaching that age, the individual is treated for the purposes of section 36 as having reached the age of 65 in the tax year.
- (3) If an individual was due to reach the age of 75 in a tax year, but dies in the tax year before reaching that age, the individual is treated for the purposes of sections 36 and 37 as having reached the age of 75 in the tax year.

### **CHAPTER 3**

#### TAX REDUCTIONS FOR MARRIED COUPLES AND CIVIL PARTNERS

#### *Introduction*

#### **42 Tax reductions under Chapter**

- (1) This Chapter contains provisions about entitlement to tax reductions in a case where a party to a marriage or civil partnership was born before 6 April 1935.
- (2) Individuals are entitled to tax reductions under the following provisions of this Chapter—
- (a) section 45 (marriages before 5 December 2005),



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- (b) section 46 (marriages and civil partnerships on or after 5 December 2005),
  - (c) section 47 (election by individual to transfer relief under section 45 or 46),
  - (d) section 48 (joint election to transfer relief under section 45 or 46),
  - (e) section 49 (election for partial transfer back of relief),
  - (f) section 51 (transfer of unused relief), and
  - (g) section 52 (transfer back of unused relief).
- (3) The tax reductions under sections 45 to 49 are subject to section 54 (tax reductions in the year of marriage or entry into civil partnership).
- (4) A tax reduction under this Chapter is given effect at Step 6 of the calculation in section 23.

#### 43 Meaning of “the minimum amount”

In this Chapter “the minimum amount” means [<sup>F12</sup>£2,540].

##### Textual Amendments

**F12** Amount in s. 43 substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), [art. 2\(6\)](#)

#### 44 Election for new rules to apply

- (1) In this Chapter “an election for the new rules to apply” means an election made by a husband and wife who got married before 5 December 2005 for the new rules to apply to them instead of the old rules.
- (2) In subsection (1)—
- “the new rules” means the rules for relief under section 46 (marriages and civil partnerships on or after 5 December 2005), and
  - “the old rules” means the rules for relief under section 45 (marriages before 5 December 2005).
- (3) An election for the new rules to apply—
- (a) must be made jointly by the parties to the marriage,
  - (b) must be made before the first tax year for which it is to be in force,
  - (c) continues in force in each subsequent tax year, and
  - (d) cannot be withdrawn.

#### *Married couple's allowance*

#### 45 Marriages before 5 December 2005

- (1) If a man—
- (a) makes a claim for a tax year, and
  - (b) meets the conditions set out in subsection (2),
- he is entitled to a tax reduction for the tax year of 10% of the amount specified in subsection (3)(a) or (b) (as applicable).

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- (2) The conditions are that—
- (a) for the whole or part of the tax year he is married and his wife is living with him,
  - (b) the marriage took place before 5 December 2005 and no election for the new rules to apply is in force for the tax year,
  - (c) he or his wife was born before 6 April 1935, and
  - (d) he meets the requirements of section 56 (residence etc).
- (3) The amount is—
- (a) [<sup>F13</sup>£6,625], if either the man or his wife is aged 75 or over at some time in the tax year, and
  - (b) [<sup>F14</sup>£6,535], in any other case.
- (4) For a man whose adjusted net income for the tax year exceeds [<sup>F15</sup>£21,800], the amounts specified in subsection (3) are reduced by—
- (a) half the excess, less
  - (b) any reduction in his personal allowance under section 36(2) or 37(2).
- (5) But subsection (4) does not reduce the amounts specified in subsection (3) below the minimum amount.
- (6) For the meaning of “adjusted net income” see section 58.

#### Textual Amendments

- F13** Amount in s. 45(3)(a) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(7)(a)**
- F14** Amount in s. 45(3)(b) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(7)(b)**
- F15** Amount in s. 45(4) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(9)**

## 46 Marriages and civil partnerships on or after 5 December 2005

- (1) If an individual—
- (a) makes a claim for a tax year, and
  - (b) meets the conditions set out in subsection (2),
- the individual is entitled to a tax reduction for the tax year of 10% of the amount specified in subsection (3)(a) or (b) (as applicable).
- (2) The conditions are that—
- (a) for the whole or part of the tax year the individual is married or in a civil partnership and is living with the spouse or civil partner,
  - (b) the marriage took place, or the civil partnership was formed, on or after 5 December 2005 or, if the marriage took place before that date, an election for the new rules to apply is in force for the tax year,
  - (c) the individual, or the spouse or civil partner, was born before 6 April 1935,
  - (d) the individual meets the requirements of section 56 (residence etc), and
  - (e) the individual's net income for the tax year exceeds that of the spouse or civil partner or, if they have the same amount of net income for the tax year, the

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individual is specified in an election as the person to be entitled to relief under this section for the year.

- (3) The amount is—
  - (a) [<sup>F16</sup>£6,625], if either the individual, or the spouse or civil partner, is aged 75 or over at some time in the tax year, and
  - (b) [<sup>F17</sup>£6,535], in any other case.
- (4) For an individual whose adjusted net income for the tax year exceeds [<sup>F18</sup>£21,800], the amounts specified in subsection (3) are reduced by—
  - (a) half the excess, less
  - (b) any reduction in the individual's personal allowance under section 36(2) or 37(2).
- (5) But subsection (4) does not reduce the amounts specified in subsection (3) below the minimum amount.
- (6) An election under subsection (2)(e)—
  - (a) is to be made jointly by the parties to the marriage or civil partnership, and
  - (b) is to be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year to which the election relates.
- (7) For the meaning of “adjusted net income” see section 58.

#### Textual Amendments

- F16** Amount in s. 46(3)(a) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(8)(a)**
- F17** Amount in s. 46(3)(b) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(8)(b)**
- F18** Amount in s. 46(4) substituted (with effect in accordance with art. 2(1) of the amending S.I.) by [Income Tax \(Indexation\) \(No.2\) Order 2007 \(S.I. 2007/3481\)](#), **art. 2(9)**

### *Elections to transfer relief*

#### **47 Election by individual to transfer relief under section 45 or 46**

- (1) If—
  - (a) an individual's spouse or civil partner is entitled to a tax reduction under section 45 or 46 for a tax year, and
  - (b) the individual meets the conditions set out in subsection (2),the individual is entitled to a tax reduction for that tax year of 10% of half the minimum amount.
- (2) The conditions are that the individual—
  - (a) has made an election which is in force for the tax year,
  - (b) makes a claim, and
  - (c) meets the requirements of section 56 (residence etc).
- (3) If an individual is entitled to a tax reduction under subsection (1), the tax reduction to which the individual's spouse or civil partner is entitled under section 45 or 46

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is calculated for the tax year as if the appropriate amount were reduced by half the minimum amount.

- (4) In subsection (3) “the appropriate amount” means—
- (a) if the individual's spouse is entitled to a tax reduction under section 45, the amount specified in section 45(3)(a) or (b) (as applicable), after any reductions under section 45(4) and 54(2), or
  - (b) if the individual's spouse or civil partner is entitled to a tax reduction under section 46, the amount specified in section 46(3)(a) or (b) (as applicable), after any reductions under sections 46(4) and 54(2).

#### **48 Joint election to transfer relief under section 45 or 46**

- (1) If—
- (a) an individual's spouse or civil partner is entitled to a tax reduction under section 45 or 46 for a tax year, and
  - (b) the conditions set out in subsection (2) are met,
- the individual is entitled to a tax reduction for that tax year of 10% of the minimum amount.
- (2) The conditions are that—
- (a) the individual and the individual's spouse or civil partner have made a joint election which is in force for the tax year,
  - (b) the individual makes a claim, and
  - (c) the individual meets the requirements of section 56 (residence etc).
- (3) If an individual is entitled to a tax reduction under subsection (1), the tax reduction to which the individual's spouse or civil partner is entitled under section 45 or 46 is calculated for the tax year as if the appropriate amount were reduced by the minimum amount.
- (4) In subsection (3) “the appropriate amount” means—
- (a) if the individual's spouse is entitled to a tax reduction under section 45, the amount specified in section 45(3)(a) or (b) (as applicable), after any reductions under section 45(4) and 54(2), or
  - (b) if the individual's spouse or civil partner is entitled to a tax reduction under section 46, the amount specified in section 46(3)(a) or (b) (as applicable), after any reductions under sections 46(4) and 54(2).

#### **49 Election for partial transfer back of relief**

- (1) If an individual whose spouse or civil partner is entitled under section 48(1) to a tax reduction for a tax year—
- (a) has made an election which is in force for the tax year, and
  - (b) makes a claim,
- the individual is entitled to a tax reduction for that tax year of 10% of half the minimum amount (in addition to any tax reduction to which the individual is entitled under section 45 or 46).
- (2) The amount of the tax reduction to which the individual's spouse or civil partner is entitled under section 48(1) for that tax year is 10% of half the minimum amount (instead of 10% of the minimum amount).

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## **50 Procedure for making and withdrawing elections under sections 47 to 49**

- (1) This section applies to elections under sections 47 to 49.
- (2) An election—
  - (a) must, except in the cases dealt with by subsection (3), be made before the first tax year in which it is to be in force, and
  - (b) continues in force in each subsequent tax year until it is withdrawn.
- (3) An election—
  - (a) may be made in the first tax year in which it is to be in force if that is the tax year in which the marriage takes place or the civil partnership is formed, and
  - (b) may be made in the first 30 days of the first tax year in which it is to be in force if appropriate notice is given before the tax year.
- (4) In subsection (3), “appropriate notice” means notice given to an officer of Revenue and Customs by the individual or (in the case of a joint election) individuals concerned that it is intended to make the election.
- (5) An election may be withdrawn only by—
  - (a) a notice given by the individual or individuals by whom the election was made, or
  - (b) a subsequent election under section 47, 48 or 49.
- (6) If an election is withdrawn under subsection (5)(a), the withdrawal does not have effect until the tax year after the one in which the notice is given.
- (7) A notice under subsection (5)(a)—
  - (a) must be given to an officer of Revenue and Customs, and
  - (b) must be in the form specified by the Commissioners for Her Majesty's Revenue and Customs.

### *Transfer of unused relief*

## **51 Transfer of unused relief**

- (1) If—
  - (a) an individual's spouse or civil partner is entitled to a tax reduction under section 45 or 46 for a tax year,
  - (b) the spouse or civil partner's MCA tax reductions are greater than the spouse or civil partner's comparable tax liability, and
  - (c) the conditions set out in subsection (4) are met,the individual is entitled to a tax reduction for that tax year equal to the unused part of the spouse or civil partner's MCA tax reductions.
- (2) The spouse or civil partner's MCA tax reductions are the sum of—
  - (a) the tax reduction to which the spouse or civil partner is entitled under section 45 or 46, and
  - (b) any tax reduction under section 49 to which the spouse or civil partner is entitled for the tax year.
- (3) The unused part of the spouse or civil partner's MCA tax reductions is equal to—
  - (a) the spouse or civil partner's MCA tax reductions, less

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- (b) the spouse or civil partner's comparable tax liability.
- (4) The conditions are that—
  - (a) the spouse or civil partner gives notice to an officer of Revenue and Customs that subsection (1) is to apply for the tax year,
  - (b) the individual makes a claim, and
  - (c) the individual meets the requirements of section 56 (residence etc).
- (5) The tax reduction to which the individual is entitled under subsection (1) is in addition to any tax reduction to which the individual is entitled under section 47 or 48.
- (6) The meaning of “comparable tax liability” is given in section 53.

## 52 Transfer back of unused relief

- (1) If—
  - (a) an individual's spouse or civil partner is entitled to a tax reduction under section 47 or 48 for a tax year,
  - (b) the tax reduction is greater than the spouse or civil partner's comparable tax liability, and
  - (c) the conditions set out in subsection (3) are met,
 the individual is entitled to a tax reduction for that tax year equal to the unused part of the spouse or civil partner's tax reduction.
- (2) The unused part of the spouse or civil partner's tax reduction is equal to—
  - (a) the tax reduction to which the spouse or civil partner is entitled, less
  - (b) the spouse or civil partner's comparable tax liability.
- (3) The conditions are that—
  - (a) the spouse or civil partner gives notice to an officer of Revenue and Customs that subsection (1) is to apply for the tax year, and
  - (b) the individual makes a claim.
- (4) The tax reduction to which the individual is entitled under subsection (1) is in addition to any tax reduction to which the individual is entitled under section 45, 46 or 49.
- (5) The meaning of “comparable tax liability” is given in section 53.

## 53 Transfer of unused relief: general

- (1) For the purposes of sections 51 and 52, the comparable tax liability of an individual is the amount of the individual's tax left after Step 6 of the calculation in section 23 for the tax year, making that calculation with the modifications set out in subsections (2) and (3).
- (2) In making that calculation, do not deduct any tax reduction under—
  - (a) section 788 of ICTA (double taxation arrangements: relief by agreement), or
  - (b) section 790(1) of ICTA (relief for foreign tax where there are no double taxation arrangements).
- (3) If the individual's entitlement to a tax reduction under this Chapter is extinguished under section 423(4) (gift aid: restriction of reliefs) to any extent, deduct from the

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amount calculated in accordance with subsections (1) and (2) the amount by which the tax reduction is reduced.

- (4) A notice under section 51 or 52—
  - (a) must be given on or before the fifth anniversary of the normal self-assessment filing date for the tax year to which it relates,
  - (b) must be in the form specified by the Commissioners for Her Majesty's Revenue and Customs, and
  - (c) cannot be withdrawn.
- (5) For the purposes of this section a person is treated as being entitled to a tax reduction under section 788 of ICTA if the person is entitled to credit against income tax under double taxation arrangements.

### *Supplementary*

## **54 Tax reductions in the year of marriage or entry into civil partnership**

- (1) Subsection (2) applies if an individual—
  - (a) gets married or enters into a civil partnership in a tax year, and
  - (b) claims a tax reduction under section 45 or 46 for that tax year.
- (2) In calculating the amount of the tax reduction (if any) to which the individual is entitled under that section, the amounts specified in section 45(3) or 46(3) (as applicable) are reduced by one twelfth for each month of the tax year which is a month ending before the date on which—
  - (a) the marriage took place, or
  - (b) the civil partnership was formed.
- (3) The reference in subsection (2) to the amounts specified in section 45(3) or 46(3) is to those amounts after any reduction under section 45(4) or 46(4).
- (4) But if—
  - (a) the individual has previously been married or in a civil partnership in the same tax year, and
  - (b) the conditions in section 45(2) or 46(2) are met in relation to the earlier marriage or civil partnership,subsection (2) applies only if the claim is in respect of the later marriage or civil partnership.
- (5) If a claim under section 47, 48 or 49 is for the tax year in which the marriage takes place, or the civil partnership is formed, the references in those sections to the minimum amount are to be read as references to the minimum amount reduced by one twelfth for each month of the tax year which is a month ending before the date on which—
  - (a) the marriage took place, or
  - (b) the civil partnership was formed.
- (6) In this section, “month” means a period beginning with the sixth day of a calendar month and ending with the fifth day of the next calendar month.

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## 55 Sections 45 to 53: supplementary

- (1) An individual is not entitled to more than one tax reduction under sections 45 to 48 for a tax year (regardless of whether the individual is a party to more than one marriage or civil partnership in the tax year).
- (2) For the purposes of sections 45 and 46 an individual is treated as having reached the age of 75 in a tax year if the individual was due to reach the age of 75 in the tax year, but dies in the tax year before reaching that age.
- (3) Unless this Chapter provides otherwise, a tax reduction to which an individual is entitled under this Chapter for a tax year, including the tax year in which the individual dies, is given in full.

## CHAPTER 4

### GENERAL

## 56 Residence etc of claimants

- (1) This section applies in relation to an individual who claims—
  - (a) an allowance under Chapter 2 (personal allowance and blind person's allowance) for a tax year, or
  - (b) a tax reduction under Chapter 3 (tax reductions for married couples and civil partners) for a tax year.
- (2) The individual meets the requirements of this section if the individual—
  - (a) is UK resident for the tax year, or
  - (b) meets the condition in subsection (3).
- (3) An individual meets the condition in this subsection if, at any time in the tax year, the individual—
  - (a) is resident in the Isle of Man or the Channel Islands,
  - (b) has previously resided in the United Kingdom and is resident abroad for the sake of the health of—
    - (i) the individual, or
    - (ii) a member of the individual's family who is resident with the individual,
  - (c) is a person who is or has been employed in the service of the Crown,
  - (d) is employed in the service of any territory under Her Majesty's protection,
  - (e) is employed in the service of a missionary society, or
  - (f) is a person whose late spouse or late civil partner was employed in the service of the Crown.

## 57 Indexation of allowances

- (1) This section provides for increases in the amounts specified in—
  - (a) section 35 (personal allowance for those aged under 65),
  - (b) section 36(1) (personal allowance for those aged 65 to 74),
  - (c) section 37(1) (personal allowance for those aged 75 and over),



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- (d) section 38(1) (blind person's allowance),
  - (e) section 43 (tax reductions for married couples and civil partners: the minimum amount),
  - (f) section 45(3)(a) and (b) (marriages before 5 December 2005),
  - (g) section 46(3)(a) and (b) (marriages and civil partnerships on or after 5 December 2005), and
  - (h) sections 36(2), 37(2), 45(4) and 46(4) (adjusted net income limit).
- (2) It applies if the retail prices index for the September before the start of a tax year is higher than it was for the previous September.
- (3) For the tax year—
- (a) the allowances specified in sections 35, 36(1), 37(1), 38(1),
  - (b) the amounts specified in sections 45(3)(a) and (b) and 46(3)(a) and (b), and
  - (c) the minimum amount specified in section 43,

are found as follows.

*Step 1*

Multiply the allowance, amount or (as the case may be) the minimum amount for the previous tax year by the same percentage as the percentage increase in the retail prices index.

*Step 2*

If the result of Step 1 is a multiple of £10, it is the increase for the tax year.

If the result of Step 1 is not a multiple of £10, round it up to the nearest amount which is a multiple of £10.

That amount is the increase for the tax year.

*Step 3*

Add the increase for the tax year to the allowance, amount or (as the case may be) the minimum amount for the previous tax year.

The result is the allowance, amount or (as the case may be) the minimum amount for the tax year.

- (4) For the tax year, the adjusted net income limits specified in sections 36(2), 37(2), 45(4) and 46(4) are found as follows.

*Step 1*

Increase the adjusted net income limit for the previous tax year by the same percentage as the percentage increase in the retail prices index.

*Step 2*

If the result of Step 1 is a multiple of £100, it is the adjusted net income limit for the tax year.

If the result of Step 1 is not a multiple of £100, round it up to the nearest amount which is a multiple of £100.

That amount is the adjusted net income limit for the tax year.

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- (5) Subsections (1) to (4) do not require a change to be made in the amounts deductible or repayable under PAYE regulations during the period beginning on 6 April and ending on 17 May in the tax year.
- (6) Before the start of the tax year the Treasury must make an order replacing the amounts specified in the provisions listed in subsection (1) with the amounts which, as a result of this section, are the allowances, amounts, the minimum amount and the adjusted net income limits for the tax year.

## **58 Meaning of “adjusted net income”**

- (1) For the purposes of Chapters 2 and 3, an individual's adjusted net income for a tax year is calculated as follows.

### *Step 1*

Take the amount of the individual's net income for the tax year.

### *Step 2*

If in the tax year the individual makes, or is treated under section 426 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid) deduct the grossed up amount of the gift.

### *Step 3*

If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the tax year under a pension scheme, deduct the gross amount of the contribution.

### *Step 4*

Add back any relief under section 457 or 458 (payments to trade unions or police organisations) that was deducted in calculating the individual's net income for the tax year.

The result is the individual's adjusted net income for the tax year.

- (2) The grossed up amount of a gift is the amount of the gift grossed up by reference to the basic rate for the tax year.
- (3) The gross amount of a contribution is the amount of the contribution before deduction of tax under section 192(1) of FA 2004.

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## PART 4

### LOSS RELIEF

#### CHAPTER 1

##### INTRODUCTION

### 59 Overview of Part

- (1) This Part provides for income tax relief for—
  - (a) losses in a trade, profession or vocation (and certain post-cessation payments and events) (see Chapters 2 and 3),
  - (b) losses in a UK property business or overseas property business (and, in the case of a UK property business, certain post-cessation payments and events) (see Chapter 4),
  - (c) losses in an employment or office (see Chapter 5),
  - (d) losses on a disposal of certain shares (see Chapter 6), and
  - (e) losses in certain miscellaneous transactions (see Chapter 7).
- (2) This Part needs to be read with Chapter 3 of Part 2 (calculation of income tax liability).
- (3) For rules about the calculation of losses for the purposes of this Part, see—
  - (a) section 26 of ITTOIA 2005 (losses of a trade, profession or vocation calculated on same basis as profits),
  - (b) section 272 of ITTOIA 2005 (which applies section 26 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits),
  - (c) section 11 of ITEPA 2003 (calculation of “net taxable earnings”), and
  - (d) section 872 of ITTOIA 2005 (losses from miscellaneous transactions calculated on same basis as miscellaneous income).

## CHAPTER 2

### TRADE LOSSES

#### *Introduction*

### 60 Overview of Chapter

- (1) This Chapter—
  - (a) provides for trade loss relief against general income (see sections 64 to 70),
  - (b) provides for early trade losses relief (see sections 72 to 74),
  - (c) contains provision restricting both those reliefs (see sections 75 to 82),
  - (d) provides for carry-forward trade loss relief (see sections 83 to 88),
  - (e) provides for terminal trade loss relief (see sections 89 to 94),
  - (f) contains restrictions on the above reliefs for trades, professions and vocations carried on wholly outside the United Kingdom (see section 95), and

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- (g) provides for post-cessation trade relief (see sections 96 to 100).
- (2) This Chapter is subject to paragraph 2 of Schedule 1B to TMA 1970 (claims for loss relief involving two or more years).
- (3) For a rule treating an individual as starting or permanently ceasing to carry on a trade, profession or vocation for income tax purposes (including those of this Part), see—
  - (a) section 17 of ITTOIA 2005 (effect of becoming or ceasing to be a UK resident), and
  - (b) section 852(6) and (7) of ITTOIA 2005 (corresponding rule in the case of a trade or profession carried on by a firm).
- (4) For the purposes of this Chapter sideways relief is—
  - (a) trade loss relief against general income, or
  - (b) early trade losses relief.
- (5) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

## **61 Non-partners: losses of a tax year**

- (1) This section applies if a trade, profession or vocation is carried on by a person otherwise than as a partner in a firm.
- (2) For the purposes of this Chapter any reference to the person making a loss in the trade, profession or vocation in a tax year is to the person making a loss in the trade, profession or vocation in the basis period for the tax year.
- (3) This section is subject to section 70 (restriction on trade loss relief against general income in case of farming or market gardening).
- (4) For the rules about basis periods, see Chapter 15 of Part 2 of ITTOIA 2005.
- (5) In particular, see the rule in section 206 of ITTOIA 2005 (restriction on bringing losses into account twice).

## **62 Partners: losses of a tax year etc**

- (1) This section applies if a trade or profession is carried on by a person as a partner in a firm.
- (2) Any reference to a person making a loss in a trade or profession in a tax year is to the partner making a loss in the partner's notional trade in the basis period for the tax year (as to which, see sections 852 and 853 of ITTOIA 2005).
- (3) Further—
  - (a) any reference to a person making a claim for relief for a loss made in a trade or profession is to the partner making a claim for relief for a loss made in the partner's notional trade,
  - (b) any reference to a basis period for a tax year is to the basis period for the partner's notional trade for the tax year,
  - (c) any reference to the profits or losses of a partner's notional trade of a tax year is to the partner's share of the firm's profits or losses of the trade or profession

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- treated for the purposes of Chapter 15 of Part 2 of ITTOIA 2005 as the profits or losses of the partner's notional trade in the basis period for the tax year,
- (d) any reference to a person starting to carry on a trade or profession is to the partner starting to carry on the notional trade in accordance with section 852(2) or (3) of ITTOIA 2005, and
  - (e) any reference to a person permanently ceasing to carry on a trade or profession is to the partner permanently ceasing to carry on the notional trade in accordance with section 852(4) to (6) of ITTOIA 2005.
- (4) In this section a partner's "notional trade" has the same meaning as in Part 9 of ITTOIA 2005.
- (5) This section applies for the purposes of this Chapter and Chapter 3, except that it does not apply for the purposes of section 67(2) or sections 68 to 70 (restriction on trade loss relief against general income in case of farming or market gardening).

**Modifications etc. (not altering text)**

**C1** S. 62 applied (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 1\(13\)](#)

## **63 Prohibition against double counting**

If relief is given under any provision of this Chapter for a loss or part of a loss, relief is not to be given for—

- (a) the same loss, or
- (b) the same part of the loss,

under any other provision of this Chapter or of the Income Tax Acts.

*Trade loss relief against general income*

## **64 Deduction of losses from general income**

- (1) A person may make a claim for trade loss relief against general income if the person—
  - (a) carries on a trade in a tax year, and
  - (b) makes a loss in the trade in the tax year ("the loss-making year").
- (2) The claim is for the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)
- (3) If the claim is made in relation to both tax years, the claim must specify the tax year for which a deduction is to be made first.
- (4) Otherwise the claim must specify either the loss-making year or the previous tax year.
- (5) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the loss-making year.

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- (6) Nothing in this section prevents a person who makes a claim specifying a particular tax year in respect of a loss from making a further claim specifying the other tax year in respect of the unused part of the loss.
- (7) This section applies to professions and vocations as it applies to trades.
- (8) This section needs to be read with—
  - (a) section 65 (how relief works),
  - (b) sections 66 to 70 (restrictions on the relief),
  - (c) sections 75 to 79 (restrictions on the relief and early trade losses relief in relation to capital allowances),
  - (d) section 80 (restrictions on those reliefs in relation to ring fence income),
  - (e) section 81 (restrictions on those reliefs in relation to dealings in commodity futures), and
  - (f) section 734 of ICTA (restrictions on those reliefs in relation to bond-washing).

## 65 How relief works

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the loss in calculating the person's net income for the specified tax year.

### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

### *Other claims*

If the loss has not been deducted in full at Steps 1 and 2, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

- (2) There is a priority rule if a person—
  - (a) makes a claim for trade loss relief against general income (“the first claim”) in relation to the loss-making year, and
  - (b) makes a separate claim in respect of a loss made in the following tax year in relation to the same tax year as the first claim.
- (3) The rule is that priority is given to making deductions under the first claim.
- (4) For this purpose a “separate claim” means—
  - (a) a claim for trade loss relief against general income, or
  - (b) a claim for employment loss relief against general income under section 128.

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### *Restriction on relief for uncommercial trades*

#### **66 Restriction on relief unless trade is commercial**

- (1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.
- (2) The trade is commercial if it is carried on throughout the basis period for the tax year—
  - (a) on a commercial basis, and
  - (b) with a view to the realisation of profits of the trade.
- (3) If at any time a trade is carried on so as to afford a reasonable expectation of profit, it is treated as carried on at that time with a view to the realisation of profits.
- (4) If the trade forms part of a larger undertaking, references to profits of the trade are to be read as references to profits of the undertaking as a whole.
- (5) If there is a change in the basis period in the way in which the trade is carried on, the trade is treated as carried on throughout the basis period in the way in which it is carried on by the end of the basis period.
- (6) The restriction imposed by this section does not apply to a loss made in the exercise of functions conferred by or under an Act.
- (7) This section applies to professions and vocations as it applies to trades.

### *Restriction on relief for “hobby” farming or market gardening*

#### **67 Restriction on relief in case of farming or market gardening**

- (1) This section applies if a loss is made in a trade of farming or market gardening in a tax year (“the current tax year”).
- (2) Trade loss relief against general income is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade in each of the previous 5 tax years (see section 70).
- (3) This section does not prevent relief for the loss from being given if—
  - (a) the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking,
  - (b) the farming or market gardening activities meet the reasonable expectation of profit test (see section 68), or
  - (c) the trade was started, or treated as started, at any time within the 5 tax years before the current tax year (see section 69 below, as well as section 17 of ITTOIA 2005).

#### **68 Reasonable expectation of profit**

- (1) This section explains how the farming or market gardening activities (“the activities”) meet the reasonable expectation of profit test for the purposes of section 67.
- (2) The test is decided by reference to the expectations of a competent farmer or market gardener (a “competent person”) carrying on the activities.

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- (3) The test is met if—
  - (a) a competent person carrying on the activities in the current tax year would reasonably expect future profits (see subsection (4)), but
  - (b) a competent person carrying on the activities at the beginning of the prior period of loss (see subsection (5)) could not reasonably have expected the activities to become profitable until after the end of the current tax year.
- (4) In determining whether a competent person carrying on the activities in the current tax year would reasonably expect future profits regard must be had to—
  - (a) the nature of the whole of the activities, and
  - (b) the way in which the whole of the activities were carried on in the current tax year.
- (5) “The prior period of loss” means—
  - (a) the 5 tax years before the current tax year, or
  - (b) if losses in the trade, calculated without regard to capital allowances, were also made in successive tax years before those 5 tax years (see section 70), the period comprising both the successive tax years and the 5 tax years.

## **69 Whether trade is the same trade**

- (1) This section applies for the purposes of sections 67 and 68.
- (2) If there is a change in the persons carrying on a trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on—
  - (a) the trade is treated as permanently ceasing to be carried on, and
  - (b) a new trade is treated as starting to be carried on, at the date of the change (but see subsections (3) to (6)).
- (3) A husband and wife are treated as the same person.
- (4) Persons who are civil partners of each other are treated as the same person.
- (5) A husband or wife is treated as the same person as—
  - (a) a company of which either one of them has control, or
  - (b) a company of which both have control.
- (6) A person's civil partner is treated as the same person as—
  - (a) a company of which either of the civil partners has control, or
  - (b) a company of which both have control.
- (7) “Control” has the same meaning as in Part 11 of ICTA (see section 416 of that Act).

## **70 Determining losses in previous tax years**

- (1) This section applies for the purposes of sections 67(2) and 68(5) in determining whether a loss, calculated without regard to capital allowances, is made in the trade in any tax year before the current tax year.
- (2) The loss made in a tax year before the current tax year is not taken to be the loss (if any) made in the basis period for the tax year, but is instead the loss made in the tax year itself.



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- (3) This loss is determined by reference to—
- (a) the profits or losses of periods of account of the trade (calculated for income tax purposes, but without regard to capital allowances), or
  - (b) if (as a result of section 69) a person claiming the relief is treated as the same person as a company within the charge to corporation tax, the profits or losses of the company's accounting periods (calculated for corporation tax purposes, but without regard to capital allowances),
- or by reference to both.

- (4) If—
- (a) a period of account does not coincide with a tax year, or
  - (b) an accounting period does not coincide with a tax year,
- any of the steps in section 203(2) of ITTOIA 2005 may be taken to arrive at the profits or losses made in a tax year.

For this purpose references in section 203(2) of that Act to basis periods are read as references to tax years and references to periods of account are read as including accounting periods.

- (5) The steps must be taken in accordance with section 203(3) or (4) of ITTOIA 2005.
- (6) A loss in a trade is calculated without regard to capital allowances by ignoring—
- (a) the allowances treated as expenses of the trade under CAA 2001, and
  - (b) the charges treated as receipts of the trade under that Act.

#### *Use of trading loss as CGT loss*

### **71 Treating trade losses as CGT losses**

A person who cannot deduct all of a loss under a claim for trade loss relief against general income may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261B and 261C of TCGA 1992.

#### *Early trade losses relief*

### **72 Relief for individuals for losses in first 4 years of trade**

- (1) An individual may make a claim for early trade losses relief if the individual makes a loss in a trade—
- (a) in the tax year in which the trade is first carried on by the individual, or
  - (b) in any of the next 3 tax years.
- (2) The claim is for the loss to be deducted in calculating the individual's net income for the 3 tax years before the one in which the loss is made (see Step 2 of the calculation in section 23).
- (3) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year in which the loss is made.
- (4) This section applies to professions and vocations as it applies to trades.
- (5) This section needs to be read with—

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- (a) section 73 (how relief works),
- (b) section 74 (restrictions on the relief),
- (c) sections 75 to 79 (restrictions on the relief and trade loss relief against general income in relation to capital allowances),
- (d) section 80 (restrictions on those reliefs in relation to ring fence income),
- (e) section 81 (restrictions on those reliefs in relation to dealings in commodity futures), and
- (f) section 734 of ICTA (restrictions on those reliefs in relation to bond-washing).

### 73 How relief works

This section explains how the deductions are made for the 3 tax years mentioned in section 72(2). The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the loss in calculating the individual's net income for the earliest of the 3 tax years.

#### *Step 2*

Deduct any part of the loss not deducted at Step 1 in calculating the individual's net income for the next tax year.

#### *Step 3*

Deduct any part of the loss not deducted at Step 1 or 2 in calculating the individual's net income for the latest of the 3 tax years.

#### *Other claims*

If the loss has not been deducted in full at Steps 1 to 3, the individual may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

### 74 Restrictions on relief unless trade is commercial etc

- (1) Early trade losses relief for a loss made by an individual in a trade in a tax year is not available unless the trade is commercial.
- (2) The trade is commercial if it is carried on throughout the basis period for the tax year—
  - (a) on a commercial basis, and
  - (b) in such a way that profits of the trade could reasonably be expected to be made in the basis period or within a reasonable time afterwards.
- (3) If the trade forms part of a larger undertaking, the reference to profits of the trade is to be read as a reference to profits of the undertaking as a whole.
- (4) Early trade losses relief for a loss made by an individual is not available if—
  - (a) the individual first carries on the trade at a time when the individual has a spouse or civil partner and is living with the spouse or civil partner,
  - (b) the spouse or civil partner previously carried on the trade, and
  - (c) the loss is made in a tax year falling after the relevant 4 year period.

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- (5) The relevant 4 year period comprises—
  - (a) the tax year in which the spouse or civil partner first carried on the trade, and
  - (b) the next 3 tax years.
- (6) This section applies to professions and vocations as it applies to trades.

#### *Restrictions on sideways relief for certain capital allowances*

### **75 Trade leasing allowances given to individuals**

- (1) Sideways relief is not available to an individual for so much of a loss as derives from a trade leasing allowance unless the individual meets the time commitment test.
- (2) A trade leasing allowance is an allowance made under Part 2 of CAA 2001 in respect of—
  - (a) expenditure incurred on the provision of plant or machinery for leasing in the course of a trade, or
  - (b) expenditure incurred on the provision for the purposes of a trade of an asset which is not to be leased but which is fee-producing.
- (3) An asset is fee-producing if payments in the nature of—
  - (a) royalties, or
  - (b) licence fees,are to arise from rights granted by the individual in connection with the asset.
- (4) To meet the time commitment test conditions A and B must be met.
- (5) Condition A is that the individual must carry on the trade for a continuous period of at least 6 months beginning or ending in the basis period for the tax year in which the loss was made (“the loss-making basis period”).
- (6) Condition B is that substantially the whole of the individual's time must be given to carrying on the trade—
  - (a) for a continuous period of at least 6 months beginning or ending in the loss-making basis period (if the individual starts or permanently ceases to carry on the trade in the tax year (or does both)), or
  - (b) throughout the loss-making basis period (in any other case).

### **76 First-year allowances: introduction**

Sideways relief is not available to an individual for so much of a loss as derives from a first-year allowance under Part 2 of CAA 2001 if either section 77 or 78 applies.

### **77 First-year allowances: partnerships with companies**

- (1) This section applies if—
  - (a) the first-year allowance is in respect of expenditure incurred at any time on the provision of plant or machinery for leasing in the course of a qualifying activity, and

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- (b) either the qualifying activity was at that time carried on by the individual in partnership with a company or arrangements have been made with a view to the activity being so carried on.
- (2) It does not matter—
  - (a) if the firm includes other partners, or
  - (b) when the arrangements were made.
- (3) For the purposes of this section—
  - (a) letting a ship on charter is treated as leasing the ship, and
  - (b) references to making arrangements include effecting schemes.

## **78 First-year allowances: arrangements to reduce tax liabilities**

- (1) This section applies if—
  - (a) the first-year allowance is made in connection with a relevant qualifying activity or a relevant asset (see subsections (2) and (3)), and
  - (b) arrangements within subsection (4) have been made.
- (2) A qualifying activity is a relevant one if—
  - (a) at the time when the expenditure was incurred, the activity was carried on by the individual as a partner in a firm, or
  - (b) at a later time, it has been carried on by the individual as a partner in a firm or transferred to a person connected with the individual.
- (3) An asset is a relevant one if, after the time when the expenditure was incurred, the asset was transferred by the individual—
  - (a) to a person connected with the individual, or
  - (b) to a person at a price lower than its market value.
- (4) Arrangements are within this subsection if as a result of them—
  - (a) the sole benefit, or
  - (b) the main benefit,
 that might be expected to arise to the individual from the transaction under which the expenditure was incurred is the obtaining of a reduction in tax liability by means of sideways relief.
- (5) It does not matter when the arrangements were made.
- (6) References to making arrangements include effecting schemes.

## **79 Capital allowances restrictions: supplementary**

- (1) If relief is given in a case to which section 75 or 76 applies, the relief is withdrawn by the making of an assessment to income tax under this section.
- (2) Expressions which are used—
  - (a) in any of sections 75 to 78, and
  - (b) in Part 2 of CAA 2001,
 have the same meaning in those sections as in that Part.

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### *Restriction on sideways relief for specific trades*

## **80 Ring fence income**

- (1) This section applies if—
  - (a) a person has income arising from oil extraction activities or oil rights (“ring fence income”), and
  - (b) the person makes a loss in any trade.
- (2) Sideways relief for the loss is not to be given against the person's ring fence income except so far as the loss arises from oil extraction activities or oil rights.
- (3) “Oil extraction activities” and “oil rights” have the same meaning as in Chapter 5 of Part 12 of ICTA (see section 502 of that Act).

## **81 Dealings in commodity futures**

- (1) This section applies if—
  - (a) a person makes a loss in a trade of dealing in commodity futures,
  - (b) the person carried on the trade as a partner in a firm,
  - (c) the person or one or more of the other partners in the firm was a company, and
  - (d) arrangements within subsection (3) have been made.
- (2) Sideways relief is not available for the loss.
- (3) Arrangements are within this subsection if as a result of them—
  - (a) the sole benefit, or
  - (b) the main benefit,that might be expected to arise to the person from the person's interest in the firm is the obtaining of a reduction in tax liability by means of sideways relief.
- (4) It does not matter whether the arrangements were made in the partnership agreement or in any other way.
- (5) References to making arrangements include effecting schemes.
- (6) If relief is given in a case to which this section applies, the relief is withdrawn by the making of an assessment to income tax under this section.
- (7) “Commodity futures” means commodity futures that are for the time being dealt in on a recognised futures exchange (within the meaning of ITTOIA 2005, see section 558(3) of that Act).

## **82 Exploitation of films**

In the case of a trade carried on by an individual which consists of or includes the exploitation of films—

- (a) see [F19]section 115] for a restriction on sideways relief if the trade was carried on by the individual as a partner in a firm, and
- (b) see section 796 for a charge to income tax if the individual made a loss in the trade (whether carried on alone or as a partner in a firm) for which sideways relief is claimed.

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### Textual Amendments

- F19** Words in s. 82(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 6, 21](#)

## *Carry-forward trade loss relief*

### **83 Carry forward against subsequent trade profits**

- (1) A person may make a claim for carry-forward trade loss relief if—
  - (a) the person has made a loss in a trade in a tax year, and
  - (b) relief for the loss has not been fully given under this Chapter or any other provision of the Income Tax Acts or under section 261B of TCGA 1992 (use of trading loss as a CGT loss).
- (2) The claim is for the part of the loss for which relief has not been given under any such provision (“the unrelieved loss”) to be deducted in calculating the person's net income for subsequent tax years (see Step 2 of the calculation in section 23).
- (3) But a deduction for that purpose is to be made only from profits of the trade.
- (4) In calculating a person's net income for a tax year, deductions under this section from the profits of a trade are to be made before deductions of any other reliefs from those profits.
- (5) This section applies to professions and vocations as it applies to trades (and section 84 is to be read accordingly).
- (6) This section needs to be read with—
  - (a) section 84 (how relief works),
  - (b) section 85 (use of trade-related interest and dividends if trade profits insufficient),
  - (c) section 86 (trade transferred to a company),
  - (d) section 87 (ring fence trades),
  - (e) section 88 (carry forward of certain interest as loss), and
  - (f) sections 17(3) and 852(7) of ITTOIA 2005 (effect of becoming or ceasing to be UK resident).

### **84 How relief works**

This section explains how the deductions are to be made. The amount of the unrelieved loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the unrelieved loss from the profits of the trade of the next tax year.

#### *Step 2*

Deduct from the profits of the trade of the following tax year the amount of the unrelieved loss not previously deducted.

#### *Step 3*

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Continue to apply Step 2 in relation to the profits of the trade of subsequent tax years until all the unrelieved loss is deducted.

## **85 Use of trade-related interest and dividends if trade profits insufficient**

- (1) This section applies if carry-forward trade loss relief cannot be fully given in relation to the profits of a trade of a tax year because (apart from this section) there are no profits, or insufficient profits, of the trade of the tax year.
- (2) For the purposes of the relief any interest or dividends for the tax year that relate to the trade are treated as profits of the trade of the tax year.
- (3) Interest or dividends for the tax year relate to the trade if they—
  - (a) arise in the tax year, and
  - (b) would be brought into account in calculating the profits of the trade but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

## **86 Trade transferred to a company**

- (1) This section applies if—
  - (a) a trade is carried on by an individual otherwise than as a partner in a firm or by individuals in partnership,
  - (b) the trade is transferred to a company,
  - (c) the consideration for the transfer is wholly or mainly the allotment of shares to the individual or individuals, and
  - (d) in the case of any individual to whom, or to whose nominee or nominees, shares are so allotted, the individual's total income for a relevant tax year includes income derived by the individual from the company.
- (2) For the purposes of carry-forward trade loss relief, the income so derived is treated as—
  - (a) profits of the trade of the relevant tax year carried on by the individual, or
  - (b) if the trade was carried on by the individual in partnership, profits of the individual's notional trade of the relevant tax year.
- (3) The tax year in which the transfer is made is a relevant one if—
  - (a) the individual is the beneficial owner of the shares allotted as mentioned above, and
  - (b) the company carries on the trade,throughout the period beginning with the date of the transfer and ending with the next 5 April.
- (4) Otherwise a tax year is a relevant one if—
  - (a) the individual is the beneficial owner of the shares allotted as mentioned above, and
  - (b) the company carries on the trade,throughout the tax year.
- (5) The income derived from the company may be by way of dividends on the shares or otherwise.

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(6) This section applies to businesses which are not trades as it applies to trades.

## **87 Ring fence trades**

(1) This section applies if—

- (a) a person makes a loss in a tax year carrying on oil-related activities (within the meaning of section 16 of ITTOIA 2005),
- (b) those activities are treated under that section as a separate trade for the tax year or a subsequent tax year,
- (c) the person makes profits in a subsequent tax year from other activities, and
- (d) the other activities and the oil-related activities would, but for that section, together form a single trade.

(2) For the purposes of carry-forward trade loss relief for the loss, the person may treat profits from the other activities in a subsequent tax year as if they were profits of the separate trade (despite section 16 of ITTOIA 2005).

## **88 Carry forward of certain interest as loss**

(1) This section applies if—

- (a) an individual pays interest in a tax year which is eligible for relief under section 383 (as a result of section 388 or 398),
- (b) the interest is an expense incurred wholly and exclusively for the purposes of a trade carried on wholly or partly in the United Kingdom, and
- (c) relief under section 383 cannot be fully given in respect of the interest because there is no income or insufficient income in the tax year.

(2) For the purposes of carry-forward trade loss relief, the amount for which relief has not been given may be carried forward to subsequent tax years as if it were a loss made in the trade.

(3) This section applies to professions and vocations as it applies to trades.

### *Terminal trade loss relief*

## **89 Carry back of losses on a permanent cessation of a trade**

(1) A person may make a claim for terminal trade loss relief if the person—

- (a) permanently ceases to carry on a trade in a tax year (“the final tax year”), and
- (b) makes a terminal loss in the trade (see section 90).

(2) The claim is for the total amount of terminal losses made in the trade by the person (“the relievable loss”) to be deducted in calculating the person's net income for the final tax year and the 3 previous tax years (see Step 2 of the calculation in section 23).

(3) But a deduction for that purpose is to be made only from profits of the trade.

(4) This section applies to professions and vocations as it applies to trades (and sections 90 and 91 are to be read accordingly).

(5) This section needs to be read with—

- (a) section 91 (how relief works),



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- (b) section 92 (use of trade-related interest and dividends if trade profits insufficient),
- (c) section 93 (mineral extraction trade and carry back of balancing allowances), and
- (d) section 94 (carry back of certain interest as loss).

## **90 Losses that are “terminal losses”**

- (1) Each of the following is a terminal loss made in the trade—
  - (a) the loss (if any) made in the trade in the period beginning with the start of the final tax year and ending with the cessation, and
  - (b) the loss (if any) made in the trade in the period consisting of so much of the previous tax year as falls in the 12 months prior to the cessation.
- (2) The profit or loss of a period mentioned in subsection (1)(a) or (b) (a “terminal loss period”) is determined by reference to the profits or losses of periods of account of the trade (calculated for income tax purposes).
- (3) If no period of account coincides with a terminal loss period, any of the following steps may be taken if they are necessary in order to arrive at the profit or loss of the terminal loss period—
  - (a) apportioning the profit or loss of a period of account between the part of the period that falls in the terminal loss period and the part that does not, and
  - (b) adding the profit or loss of a period of account (or part of a period) to profits or losses of other periods of account (or parts).
- (4) Section 203(3) and (4) of ITTOIA 2005 applies for the purposes of subsection (3) as it applies for the purposes of section 203(2) of that Act.
- (5) If as a result of section 205 of ITTOIA 2005 a deduction is allowed for overlap profit in calculating the profits of the trade of the final tax year, that deduction is to be made in calculating the loss (if any) mentioned in subsection (1)(a) (and is therefore irrelevant for the purposes of subsection (1)(b)).
- (6) In the case of a notional trade carried on by a partner in a firm—
  - (a) the periods of account of the notional trade are taken to be the periods of account of the actual trade, and
  - (b) the references in subsections (2) and (3) to the profits or losses of periods of account of the trade are to the partner's share of the profits or losses of the actual trade determined in accordance with sections 849 and 850 of ITTOIA 2005.

## **91 How relief works**

This section explains how the deductions are to be made. The amount of the relieviable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the relieviable loss from the profits of the trade of the final tax year.

### *Step 2*

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Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

*Step 3*

Deduct any part of the relievable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

*Step 4*

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

*Other claims*

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).

## **92 Use of trade-related interest and dividends if trade profits insufficient**

- (1) This section applies if terminal trade loss relief cannot be fully given in relation to the profits of a trade of a tax year because (apart from this section) there are no profits, or insufficient profits, of the trade of the tax year.
- (2) For the purposes of the relief any interest or dividends for the tax year that relate to the trade are treated as profits of the trade of the tax year.
- (3) Interest or dividends for the tax year relate to the trade if they—
  - (a) arise in the tax year, and
  - (b) would be brought into account in calculating the profits of the trade but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

## **93 Mineral extraction trade and carry back of balancing allowances**

- (1) This section applies if—
  - (a) a person permanently ceases to carry on a mineral extraction trade, and
  - (b) the person makes a claim for terminal trade loss relief and a claim in respect of a balancing allowance under section 355 of CAA 2001.
- (2) Terminal trade loss relief must be given before relief under section 355 of CAA 2001.
- (3) In giving effect to the terminal trade loss relief, the balancing allowance is to be ignored.
- (4) “Mineral extraction trade” has the same meaning as in Part 5 of CAA 2001 (see section 394 of that Act).

## **94 Carry back of certain interest as loss**

- (1) This section applies if—
  - (a) an individual pays interest in a tax year which is eligible for relief under section 383 (as a result of section 388 or 398),

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- (b) the interest is an expense incurred wholly and exclusively for the purposes of a trade carried on wholly or partly in the United Kingdom, and
  - (c) relief under section 383 cannot be fully given in respect of the interest because there is no income or insufficient income in the tax year.
- (2) For the purposes of terminal trade loss relief, the amount for which relief has not been given may be treated as a loss made in the trade at the date of payment.
- (3) This section applies to professions and vocations as it applies to trades.

#### *Wholly foreign trades*

### **95 Foreign trades etc: reliefs only against foreign income**

- (1) This section applies if a person—
  - (a) carries on a trade, profession or vocation wholly outside the United Kingdom, and
  - (b) makes a loss in the trade, profession or vocation.
- (2) In that case—
  - (a) sideways relief for the loss is available only against the person's qualifying foreign income,
  - (b) trade income relief for the loss is available only against the person's qualifying foreign trade income, and
  - (c) section 261B of TCGA 1992 (use of trading loss as a CGT loss) does not apply in relation to the loss.
- (3) “Trade income relief” means—
  - (a) carry-forward trade loss relief, or
  - (b) terminal trade loss relief.
- (4) “Qualifying foreign income” means—
  - (a) qualifying foreign trade income, or
  - (b) income falling within section 23, 355, 575, 613, 615, 631 or 635 of ITEPA 2003 (foreign employment or pension income).
- (5) “Qualifying foreign trade income” means the profits of any trade, profession or vocation carried on wholly outside the United Kingdom.
- (6) But “qualifying foreign income” and “qualifying foreign trade income” do not include any income which is charged to income tax in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).

#### *Post-cessation trade relief*

### **96 Post-cessation trade relief**

- (1) A person may make a claim for post-cessation trade relief if, after permanently ceasing to carry on a trade—
  - (a) the person makes a qualifying payment, or
  - (b) a qualifying event occurs in relation to a debt owed to the person,

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and the payment is made, or the event occurs, within 7 years of that cessation.

- (2) If the claim is made in respect of a payment, the claim is for the payment to be deducted in calculating the person's net income for the tax year in which the payment is made (see Step 2 of the calculation in section 23).
- (3) If the claim is made in respect of an event, the claim is for the appropriate amount of the debt to be deducted in calculating the person's net income for the relevant tax year (see Step 2 of the calculation in section 23).
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the deduction is to be made.
- (5) If—
  - (a) the person is a company within the charge to income tax under Chapter 2 of Part 2 of ITTOIA 2005 in respect of a trade, and
  - (b) the company ceases at any time to be within that tax charge in respect of the trade,
 the company is treated for the purposes of this section as permanently ceasing to carry on the trade at that time.
- (6) This section applies to professions and vocations as it applies to trades (and sections 97 and 98 are to be read accordingly).
- (7) This section needs to be read with—
  - (a) section 97 (meaning of “qualifying payment”),
  - (b) section 98 (meaning of “qualifying event” etc),
  - (c) section 99 (reduction of relief for unpaid trade expenses), and
  - (d) section 100 (prohibition against double counting).

## 97 Meaning of “qualifying payment”

- (1) For the purposes of section 96 a person makes a “qualifying payment” after permanently ceasing to carry on a trade if the person makes a payment wholly and exclusively for any of purposes A to D.
- (2) A payment is made for purpose A if it is made—
  - (a) in remedying defective work done, goods supplied or services provided in the course of the trade, or
  - (b) by way of damages (whether awarded or agreed) in respect of defective work done, goods supplied or services provided in the course of the trade.
- (3) A payment is made for purpose B if it is made in meeting the expenses of legal or other professional services in connection with a claim (a “claim about defects”) that—
  - (a) work done in the course of the trade was defective,
  - (b) goods supplied in the course of the trade were defective, or
  - (c) services provided in the course of the trade were defective.
- (4) A payment is made for purpose C if it is made in insuring—
  - (a) against liabilities arising out of any claim about defects, or
  - (b) against the liability to meet the expenses of legal or other professional services in connection with any claim about defects.

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- (5) A payment is made for purpose D if it is made for the purpose of collecting a debt which was brought into account in calculating the profits of the trade.

## **98 Meaning of “qualifying event” etc**

- (1) This section explains for the purposes of section 96 what is meant by—
- (a) a “qualifying event” occurring in relation to a debt owed to a person who has permanently ceased to carry on a trade, and
  - (b) “the appropriate amount of the debt” to be deducted in calculating a person's net income for “the relevant tax year”.
- (2) A qualifying event occurs in relation to a debt owed to the person if—
- (a) an unpaid debt was brought into account in calculating the profits of the trade,
  - (b) the person is entitled to the benefit of the debt, and
  - (c) the debt is released (in whole or in part) as part of a statutory insolvency arrangement (within the meaning of Part 2 of ITTOIA 2005).

The event occurs when the debt is released.

- (3) The appropriate amount of the debt to be deducted is—
- (a) the amount released, or
  - (b) if the person was entitled to only part of the benefit of the debt, the corresponding part of the amount released.
- (4) The relevant tax year is the tax year in which the debt is released.
- (5) A qualifying event also occurs in relation to a debt owed to the person if—
- (a) an unpaid debt was brought into account in calculating the profits of the trade,
  - (b) the person is entitled to the benefit of the debt, and
  - (c) the debt proves to be bad.

The event occurs when the debt proves to be bad.

- (6) The appropriate amount of the debt to be deducted is—
- (a) the amount of the debt, or
  - (b) if the person was entitled to only part of the benefit of the debt, the corresponding part of the amount of the debt.
- (7) The relevant tax year is the tax year specified in the claim.
- (8) The person making the claim may specify—
- (a) the tax year in which the debt proves to be bad, or
  - (b) a subsequent tax year throughout which the debt remains bad (so long as the tax year begins within 7 years of the cessation),
- but, if the person has previously made a claim specifying a tax year in respect of the debt, the person may not specify another tax year in respect of it.

## **99 Reduction of relief for unpaid trade expenses**

- (1) This section applies for the purposes of post-cessation trade relief in respect of a person's trade if a deduction was made in calculating the profits of the trade for an expense not actually paid (an “unpaid expense”).

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- (2) The amount of the person's relief for a tax year is reduced (but not below nil) by—
  - (a) the total amount of unpaid expenses at the end of the tax year, or
  - (b) if the person carried on the trade as a partner in a firm, the person's share of the total amount of unpaid expenses at the end of the tax year.
- (3) But any unpaid expense which is taken into account in reducing the amount of the person's relief for a tax year is left out of account in making reductions for subsequent tax years.
- (4) If the person actually pays an amount in respect of an unpaid expense taken into account in reducing the amount of the person's relief, the person is treated as making a qualifying payment for the purposes of section 96.
- (5) The amount of the qualifying payment is—
  - (a) the amount actually paid, or
  - (b) if less, the amount of the reduction.
- (6) This section applies to professions and vocations as it applies to trades.

## **100 Prohibition against double counting**

- (1) Post-cessation trade relief is not available for an amount for which relief is given, or is available, under any other provision of the Income Tax Acts.
- (2) For this purpose—
  - (a) relief available under section 254 of ITTOIA 2005 (allowable deductions against post-cessation receipts) is treated as given for other amounts before any amount for which post-cessation trade relief is available, and
  - (b) relief under that section is treated as available if it would have been available but for the fact that the post-cessation receipts (against which the deductions would have been allowed) are exempt under section 524 of this Act.

## **101 Treating excess post-cessation trade relief as CGT loss**

A person who cannot deduct all of an amount under a claim for post-cessation trade relief may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261D and 261E of TCGA 1992.

# **CHAPTER 3**

## **RESTRICTIONS ON TRADE LOSS RELIEF FOR CERTAIN PARTNERS**

### *Introduction*

## **102 Overview of Chapter**

- (1) This Chapter restricts the amount of relief that may be given for any loss made by an individual in a trade carried on by the individual as—
  - (a) a limited partner in any tax year (see sections [F20 103A, 103C to 105, 113A and 114]),

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- (b) a member of a limited liability partnership (an “LLP”) in any tax year (see sections [F21]103C, 103D, 107 to 109, 113A and 114)], or
  - (c) a non-active partner [F22](see sections 103B to 103D and 110 to 114) ].
- (2) This Chapter also restricts the amount of relief that may be given for any loss made by an individual in a trade carried on by the individual as a partner in a firm if the trade consists of or includes the exploitation of films (see [F23]section 115 ).
- (3) This Chapter needs to be read with sections 791 to 795 (income tax charge recovering excess relief for losses made by individuals carrying on a trade in partnership).
- (4) See also—
- (a) sections 796 to 803 (income tax charge in relation to individuals claiming relief for film-related trading losses), and
  - (b) sections 804 to 809 (income tax charge in relation to individuals carrying on a trade in partnership claiming relief for licence-related trading losses).

#### Textual Amendments

- F20** Words in s. 102(1)(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 7\(2\)\(a\)](#), 21
- F21** Words in s. 102(1)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 7\(2\)\(b\)](#), 21
- F22** Words in s. 102(1)(c) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 7\(2\)\(c\)](#), 21
- F23** Words in s. 102(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 7\(3\)](#), 21

### 103 Meaning of “sideways relief”, “capital gains relief” and “firm”

- (1) For the purposes of this Chapter sideways relief is—
- (a) trade loss relief against general income (see sections 64 to 70), or
  - (b) early trade losses relief (see sections 72 to 74).
- (2) For the purposes of this Chapter—
- (a) capital gains relief is, in relation to a loss, the treatment of the loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
  - (b) capital gains relief is given for a loss when it is so treated.
- (3) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

#### [F24]103A Meaning of “limited partner”

- (1) In this Chapter “ limited partner ” means an individual who carries on a trade—
- (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
  - (b) as a partner in a firm who in substance acts as a limited partner in relation to the trade (see subsection (2)), or

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- (c) while the condition mentioned in subsection (3) is met in relation to the individual.
- (2) An individual in substance acts as a limited partner in relation to a trade if the individual—
  - (a) is not entitled to take part in the management of the trade, and
  - (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.
- (3) The condition referred to in subsection (1)(c) is that—
  - (a) the individual carries on the trade jointly with other persons,
  - (b) under the law of a territory outside the United Kingdom, the individual is not entitled to take part in the management of the trade, and
  - (c) under that law, the individual is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.
- (4) In the case of an individual who is a limited partner as a result of subsection (1)(c), references in this Chapter to the individual's firm are to be read as references to the relationship between the individual and the other persons mentioned in subsection (3) (a).

#### Textual Amendments

**F24** Ss. 103A, 103B inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 8, 21](#)

### 103B Meaning of “non-active partner” etc

- (1) For the purposes of this Chapter an individual carries on a trade as a non-active partner during a tax year if the individual—
  - (a) carries on the trade as a partner in a firm at a time during the year,
  - (b) does not carry on the trade as a limited partner at any time during the year, and
  - (c) does not devote a significant amount of time to the trade in the relevant period for the year.
- (2) For the purposes of this Chapter an individual devotes a significant amount of time to a trade in the relevant period for a tax year if, in that period, the individual spends an average of at least 10 hours a week personally engaged in activities carried on for the purposes of the trade.
- (3) For this purpose “the relevant period” means the basis period for the tax year (unless the basis period is shorter than 6 months).
- (4) If the basis period for the tax year is shorter than 6 months, “the relevant period” means—
  - (a) the period of 6 months beginning with the date on which the individual first started to carry on the trade (if the basis period begins with that date), or
  - (b) the period of 6 months ending with the date on which the individual permanently ceased to carry on the trade (if the basis period ends with that date).
- (5) If—



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- (a) any relief is given on the assumption that the individual devoted or will devote a significant amount of time to the trade in the relevant period for a tax year, but
  - (b) the individual in fact failed or fails to do so,
- the relief is withdrawn by the making of an assessment to income tax under this section.]

#### Textual Amendments

**F24** Ss. 103A, 103B inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 8, 21](#)

*[<sup>F25</sup>Limit on amount of sideways relief and capital gains relief*

#### Textual Amendments

**F25** S. 103C and cross-heading inserted (with effect in accordance with Sch. 4 para. 1(2)-(13) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 1\(1\)](#)

### **103C Limit on reliefs in any tax year not to exceed cap for tax year**

- (1) This section applies if an individual carries on one or more trades—
  - (a) as a non-active partner in a firm during a tax year, or
  - (b) as a limited partner in a firm at a time in that tax year,and the individual makes a loss in any of those trades (an “affected loss”) in that tax year.
- (2) There is a restriction on the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of this Chapter) may be given to the individual for any affected loss (but see subsections (6) and (7)).
- (3) The restriction is that the total amount of the sideways relief and capital gains relief given to the individual for all the affected losses must not exceed the cap for that tax year.
- (4) The cap for any tax year is £25,000.
- (5) The Treasury may by order amend the sum for the time being specified in subsection (4).
- (6) The restriction under this section does not apply to so much of any affected loss as derives from qualifying film expenditure (see section 103D).
- (7) The restriction under this section does not affect the giving of sideways relief for a loss made in a trade against the profits of that trade.
- (8) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993). ]

### **[<sup>F26</sup>103D Meaning of “qualifying film expenditure”**

- (1) For the purposes of this Chapter expenditure is qualifying film expenditure if—

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- (a) it is deducted under a relevant film provision for the purposes of the calculation required by section 849 of ITTOIA 2005 (calculation of firm's profits or losses), or
  - (b) it is incidental expenditure which (although not deducted under a relevant film provision) is incurred in connection with the production of a film, or the acquisition of the original master version of a film, in relation to which expenditure is so deducted.
- (2) Expenditure is incidental if it is on management, administration or obtaining finance.
- (3) The extent to which expenditure is within subsection (1)(b) is determined on a just and reasonable basis.
- (4) For the purposes of this Chapter the amount of any loss that derives from qualifying film expenditure is determined on a just and reasonable basis.
- (5) In this section—
- “ the acquisition of the original master version of a film ” has the same meaning as in Chapter 9 of Part 2 of ITTOIA 2005 (see sections 130 and 132 of that Act),
  - “ film ” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985, and
  - “ a relevant film provision ” means any one of sections 137 to 140 of ITTOIA 2005 (relief for certified master versions of films). ]

#### Textual Amendments

**F26** S. 103D inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 9, 21](#)

### Limited partners

#### 104 Restriction on reliefs for limited partners

- (1) This section applies if—
- (a) at a time in a tax year (“the relevant tax year”) an individual carries on a trade (“the relevant trade”) as a limited partner in a firm, and
  - (b) the individual makes a loss in the relevant trade in the relevant tax year.
- (2) There is a restriction on the amount of relief within subsection (3) which may be given to the individual for the loss.
- (3) The relief within this subsection is—
- (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (4) The restriction is that—
- (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,
- must not exceed the individual's contribution to the firm as at the end of the basis period for the relevant tax year (see section 105).

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- (5) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
- (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a limited partner, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner<sup>F27</sup> ....
- (6) “The total amount of recovered relief” means the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the relevant trade.
- (7) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
- (a) apply subsection (5) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (6) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.

#### Textual Amendments

**F27** Words in s. 104(5) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(a\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

### 105 Meaning of “contribution to the firm”

- (1) For the purposes of section 104 the individual's contribution to the firm is the sum of amounts A and B.
- (2) Amount A is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (4).
- (3) In particular, the individual's share of any profits of the firm is to be included in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.
- (4) An amount of capital is within this subsection if it is an amount which—
- (a) the individual has previously drawn out or received back,
  - (b) the individual is or may be entitled to draw out or receive back at any time when the individual is carrying on a trade as a limited partner in the firm, or
  - (c) the individual is or may be entitled to require another person to reimburse to the individual.
- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade.
- (6) Amount B is the amount of the individual's total share of profits within subsection (7) except so far as—
- (a) that share has been added to the firm's capital, or

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- (b) the individual has received that share in money or money's worth.
- (7) Profits are within this subsection if they are from the relevant trade.
- (8) In determining the amount of the individual's total share of profits within subsection (7) ignore the individual's share of any losses from the relevant trade which would (apart from this subsection) reduce that amount.
- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for income tax purposes).
- (10) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, subsections (7) and (8) have effect as if references to the relevant trade were references to the relevant trade or any of the other trades.
- (11) This section needs to be read with [<sup>F28</sup>section 113A and any regulations made under section 114 (exclusion of amounts)] in calculating the individual's contribution to the firm for the purposes of section 104).

#### Textual Amendments

**F28** Words in s. 105(11) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(a\), 21](#)

### <sup>F29</sup>106 Meaning of “limited partner”

.....

#### Textual Amendments

**F29** S. 106 repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 12, 21](#), [Sch. 27 Pt. 2\(1\)](#)

### Members of LLPs

#### 107 Restriction on reliefs for members of LLPs

- (1) This section applies if—
  - (a) an individual carries on a trade (“the relevant trade”) as a member of an LLP at a time in a tax year, and
  - (b) the individual makes a loss in the relevant trade in the tax year (“the relevant tax year”).
- (2) But if the relevant tax year is an early tax year during which the individual carries on the relevant trade as a non-active partner <sup>F30</sup>...—
  - (a) this section does not apply, and
  - (b) section 110 applies instead.
- (3) There is a restriction on the amount of relief within subsection (4) which may be given to the individual for the loss.

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- (4) The relief within this subsection is—
  - (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (5) The restriction is that—
  - (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,
 must not exceed the individual's contribution to the LLP as at the end of the basis period for the relevant tax year (see section 108).
- (6) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
  - (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a member of an LLP, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner.
- (7) “The total amount of recovered relief” means the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the relevant trade.
- (8) If the LLP is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
  - (a) apply subsection (6) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (7) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.

#### Textual Amendments

**F30** Words in s. 107(2) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 4 paras. 10\(b\), 21, Sch. 27 Pt. 2\(1\)](#)

### 108 Meaning of “contribution to the LLP”

- (1) For the purposes of section 107 the individual's contribution to the LLP at any time (“the relevant time”) is the sum of amounts A and B.
- (2) Amount A is the amount which the individual has contributed to the LLP as capital less so much of that amount (if any) as is within subsection (5).
- (3) In particular, the individual's share of any profits of the LLP is to be included in the amount which the individual has contributed to the LLP as capital so far as that share has been added to the LLP's capital.
- (4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).

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- (5) An amount of capital is within this subsection if it is an amount which—
- (a) the individual has previously drawn out or received back,
  - (b) the individual draws out or receives back during the period of 5 years beginning with the relevant time,
  - (c) the individual is or may be entitled to draw out or receive back at any time when the individual is a member of the LLP, or
  - (d) the individual is or may be entitled to require another person to reimburse to the individual.
- (6) In subsection (5) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade.
- (7) Amount B is the amount of the individual's liability on a winding up of the LLP so far as that amount is not included in amount A.
- (8) For the purposes of subsection (7) the amount of the individual's liability on a winding up of the LLP is the amount which—
- (a) the individual is liable to contribute to the assets of the LLP in the event of its being wound up, and
  - (b) the individual remains liable to contribute for the period of at least 5 years beginning with the relevant time (or until the LLP is wound up, if that happens before the end of that period).
- (9) This section needs to be read with <sup>F31</sup>section 113A and any regulations made under section 114 (exclusion of amounts] in calculating the individual's contribution to the LLP for the purposes of section 107).

#### Textual Amendments

**F31** Words in s. 108(9) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(b\), 21](#)

## 109 Unrelieved losses brought forward

- (1) This section applies for the purpose of determining an individual's entitlement to sideways relief and capital gains relief if—
- (a) the individual carries on a trade as a member of an LLP at a time during a tax year (“the current tax year”), and
  - (b) as a result of section 107, sideways relief or capital gains relief has not been given to the individual for amounts of loss made in the trade in previous tax years as a member of the LLP.
- (2) So far as they are not excluded by subsection (3), the amounts of loss mentioned in subsection (1)(b) are treated as having been made in the current tax year.
- (3) An amount of loss is excluded so far as—
- (a) as a result of this section, sideways relief or capital gains relief has been given to the individual for the amount for years prior to the current tax year or would have been so given had a claim been made, or

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- (b) other than as a result of this section, relief under the Income Tax Acts has been given to the individual for the amount for years prior to the current tax year or for the current tax year.

*Non-active members of LLPs or other partnerships (apart from limited partnerships)*

## **110 Restriction on reliefs for non-active partners in early tax years**

- (1) This section applies if—
  - (a) an individual carries on a trade (“the relevant trade”) as a non-active partner in a firm during an early tax year<sup>F32</sup> ..., and
  - (b) the individual makes a loss in the relevant trade in that tax year (“the relevant tax year”).
- (2) There is a restriction on the amount of relief within subsection (3) which may be given to the individual for the loss.
- (3) The relief within this subsection is—
  - (a) sideways relief against the individual's income apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (4) The restriction is that—
  - (a) the sum of the amount of the relief given and the total amount of all other relevant relief given, less
  - (b) the total amount of recovered relief,must not exceed the individual's contribution to the firm as at the end of the basis period for the relevant tax year (see section 111).
- (5) “Relevant relief” means sideways relief or capital gains relief given to the individual for—
  - (a) a loss made in the relevant trade in a tax year at a time during which the individual carries on that trade as a limited partner or as a member of an LLP, or
  - (b) a loss made in the relevant trade in an early tax year during which the individual carries on that trade as a non-active partner.
- (6) “The total amount of recovered relief” means the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the relevant trade.
- (7) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief and the total amount of recovered relief—
  - (a) apply subsection (5) in relation to each other trade as well as the relevant trade and then add the results together, and
  - (b) apply subsection (6) as if the reference to the relevant trade were a reference to the relevant trade or any of the other trades.
- (8) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993).



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### Textual Amendments

- F32** Words in s. 110(1)(a) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(c\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

## 111 Meaning of “contribution to the firm”

- (1) For the purposes of section 110 the individual's contribution to the firm at any time (“the relevant time”) is the sum of amount A and amount B and, if there is a winding up of the firm, amount C.
- (2) Amount A is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (4).
- (3) In particular, the individual's share of any profits of the firm is to be included in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.
- (4) An amount of capital is within this subsection if it is an amount which—
  - (a) the individual has previously drawn out or received back,
  - (b) the individual draws out or receives back during the period of 5 years beginning with the relevant time,
  - (c) the individual is or may be entitled to draw out or receive back at any time when the individual is carrying on a trade as a partner in the firm, or
  - (d) the individual is or may be entitled to require another person to reimburse to the individual.
- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade.
- (6) Amount B is the amount of the individual's total share of profits within subsection (7) except so far as—
  - (a) that share has been added to the firm's capital, or
  - (b) the individual has received that share in money or money's worth.
- (7) Profits are within this subsection if they are from the relevant trade.
- (8) In determining the amount of the individual's total share of profits within subsection (7) ignore the individual's share of any losses from the relevant trade which would (apart from this subsection) reduce that amount.
- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for income tax purposes).
- (10) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, subsections (7) and (8) have effect as if references to the relevant trade were references to the relevant trade or any of the other trades.

Subsection (8) of section 110 applies for the purposes of this subsection as it applies for the purposes of that section.



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- (11) Amount C is the amount which the individual has contributed to the assets of the firm on its winding up so far as it is not included in amount A or B.
- (12) This section needs to be read with <sup>F33</sup>section 113A and any regulations made under section 114 (exclusion of amounts) in calculating the individual's contribution to the firm for the purposes of section 110).

#### Textual Amendments

**F33** Words in s. 111(12) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 11\(c\), 21](#)

### 112 <sup>F34</sup>Meaning of “early tax year”]

- <sup>F35</sup>(1) .....
- <sup>F35</sup>(2) .....
- <sup>F35</sup>(3) .....
- <sup>F35</sup>(4) .....
- <sup>F35</sup>(5) .....

- (6) In this Chapter “early tax year” means, in relation to an individual carrying on a trade—
- the tax year in which the individual first started to carry on the trade, or
  - one of the next 3 tax years.

#### Textual Amendments

**F34** S. 112 heading substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 13\(b\), 21](#)

**F35** S. 112(1)-(5) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 13\(a\), 21](#), [Sch. 27 Pt. 2\(1\)](#)

### 113 Unrelieved losses brought forward

- (1) This section applies for the purpose of determining an individual's entitlement to sideways relief and capital gains relief in relation to a trade if—
- at a time during a tax year (“the current tax year”) the individual carries on the trade as a partner in a firm or makes a contribution to the assets of a firm within subsection (2) on the firm's winding up, and
  - as a result of section 110, sideways relief or capital gains relief has not been given to the individual for amounts of loss made in the trade in previous tax years.
- (2) A firm is within this subsection if the individual has carried on the trade as a partner in the firm.
- (3) So far as they are not excluded by subsection (4), the amounts of loss mentioned in subsection (1)(b) are treated as having been made in the current tax year.

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- (4) An amount of loss is excluded so far as—
  - (a) as a result of this section, sideways relief or capital gains relief has been given to the individual for the amount for years prior to the current tax year or would have been so given had a claim been made, or
  - (b) other than as a result of this section, relief under the Income Tax Acts has been given to the individual for the amount for years prior to the current tax year or for the current tax year.
- (5) For the purpose of applying sections 107 and 110 in relation to the amounts of loss treated by this section as having been made in the current tax year—
  - (a) the individual is treated as having carried on the trade during the current tax year as a non-active partner in the firm, and
  - (b) the current tax year is treated as if it were an early tax year in relation to the individual's carrying on of the trade.
- (6) Subsection (7) applies if the individual—
  - (a) made a contribution in the current tax year to the assets of the firm on its winding up, but
  - (b) did not carry on the trade as a partner in the firm in the current tax year.
- (7) If this subsection applies—
  - (a) the restrictions under sections 66 and 74(1) do not apply in relation to the amounts of loss treated by this section as having been made in the current tax year, and
  - (b) in the application of this Chapter in relation to those amounts of loss, section 110(4) has effect as if the words “the basis period for” were omitted.
- (8) In subsection (1)(b) the reference to amounts of loss does not include amounts of loss which have been treated by section 109 as having been made in any previous tax year.

*<sup>F36</sup>Exclusion of amounts in calculating contribution to the firm or LLP*

#### Textual Amendments

**F36** S. 113A and cross-heading inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 para. 2](#)

### 113A Exclusion of amounts contributed to access relief

- (1) An amount which an individual contributes to a firm as capital is to be excluded in calculating the individual's contribution to the firm for the purposes of section 104 or 110 if the contribution was made for a prohibited purpose (but see subsection (4)).
- (2) If—
  - (a) an individual carries on a trade as a member of an LLP at a time in a tax year,
  - (b) the individual does not devote a significant amount of time to the trade in the relevant period for that year, and
  - (c) the individual contributes an amount to the LLP as capital at any time in that year,

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that amount is to be excluded in calculating the individual's contribution to the LLP for the purposes of section 107 if the contribution was made for a prohibited purpose (but see subsection (4)).

- (3) For the purposes of this section a contribution is made for a prohibited purpose if the main purpose, or one of the main purposes, of making the contribution is the obtaining of a reduction in tax liability by means of sideways relief or capital gains relief.
- (4) This section has no effect in relation to the application of any restriction under section 104, 107 or 110 to any loss that derives wholly from qualifying film expenditure.]

F37 ...

#### Textual Amendments

**F37** S. 114 cross-heading omitted and s. 114 heading substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 14, 21](#)

### 114 [F37 Power to exclude other amounts ]

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that any amount of a specified description is to be excluded in calculating—
  - (a) the individual's contribution to the firm for the purposes of section 104 or 110, or
  - (b) the individual's contribution to the LLP for the purposes of section 107.
- (2) “Specified” means specified in the regulations.
- (3) The regulations may—
  - (a) make provision having retrospective effect,
  - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) make different provision for different cases or purposes.
- (4) The provision which may be made as a result of subsection (3)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (5) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

*Restrictions for film trades carried on in partnership*

### 115 Restrictions on reliefs for firms exploiting films

- (1) This section applies if—
  - (a) an individual carries on a trade as a partner in a firm at a time during a tax year,
  - (b) the trade consists of or includes the exploitation of films,
  - (c) the individual makes a loss in the trade in the tax year (“the affected tax year”),
  - (d) the individual does not devote a significant amount of time to the trade in the relevant period for the affected tax year <sup>F38</sup> ...,

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- (e) the affected tax year is the one in which the individual first started to carry on the trade or is one of the next 3 tax years, and
  - (f) a relevant agreement existed at a time during the affected tax year which guaranteed the individual an amount of income (see subsections (5) to (9)).
- (2) Sideways relief for the loss is not available to the individual, except against any of the individual's income which consists of profits of the trade.
- (3) Capital gains relief for the loss is not available to the individual.
- [<sup>F39</sup>(4) The restrictions under this section do not apply to so much of the loss (if any) as derives from qualifying film expenditure.]
- (5) An agreement is relevant if—
- (a) it is an agreement made with a view to the individual's carrying on the trade,
  - (b) it is an agreement made in the course of the individual's carrying it on, or
  - (c) it is related to an agreement falling within paragraph (a) or (b).
- (6) An agreement is relevant whether or not the individual is or may be required under the agreement to contribute an amount to the trade.
- (7) Agreements are related to one another if they are entered into under the same arrangement (regardless of when either agreement is entered into).
- (8) A relevant agreement guarantees the individual an amount of income if it (or any part of it) is designed to secure the receipt by the individual of that amount (or at least that amount) of income.
- (9) It does not matter when the amount of income is (or is to be) received.
- (10) In this section “film” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985 (c. 21).

#### Textual Amendments

- F38** Words in s. 115(1)(d) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 10\(d\), 21](#), [Sch. 27 Pt. 2\(1\)](#)
- F39** S. 115(4) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 15, 21](#)

#### <sup>F40</sup>**116 Exclusion from restrictions under section 115: certain film expenditure**

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#### Textual Amendments

- F40** S. 116 repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 16, 21](#), [Sch. 27 Pt. 2\(1\)](#)

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## CHAPTER 4

### LOSSES FROM PROPERTY BUSINESSES

#### *Introduction*

#### **117 Overview of Chapter**

- (1) This Chapter—
- (a) provides for losses made in a UK property business or overseas property business in a tax year to be carried forward for deduction from profits in subsequent tax years (see sections 118 and 119),
  - (b) provides in limited circumstances for relief against general income for losses made in a UK property business or overseas property business (see sections 120 to 124), and
  - (c) provides for relief for certain post-cessation payments and events in connection with a UK property business (see section 125).
- (2) This Chapter also makes provision for a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation to be treated as a trade for the purposes of this Part (see section 127).

#### *Carry-forward property loss relief*

#### **118 Carry forward against subsequent property business profits**

- (1) Relief is given to a person under this section if the person—
- (a) carries on a UK property business or overseas property business (alone or in partnership) in a tax year, and
  - (b) makes a loss in the business in the tax year.
- (2) The relief is given by deducting the loss in calculating the person's net income for subsequent tax years (see Step 2 of the calculation in section 23).
- (3) But a deduction for that purpose is to be made only from profits of the business.
- (4) In calculating a person's net income for a tax year, deductions under this section from the profits of a business are to be made before deductions of any other reliefs from those profits.
- (5) No relief is to be given under this section so far as relief for the loss is given under section 120.
- (6) This section needs to be read with section 119 (how relief works).

#### **119 How relief works**

This section explains how the deductions are to be made. The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

##### *Step 1*

Deduct the loss from the profits of the business for the next tax year.

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### *Step 2*

Deduct from the profits of the business for the following tax year the amount of the loss not previously deducted.

### *Step 3*

Continue to apply Step 2 in relation to the profits of the business for subsequent tax years until all the loss is deducted.

## *Property loss relief against general income*

### **120 Deduction of property losses from general income**

- (1) A person may make a claim for property loss relief against general income if—
  - (a) in a tax year (“the loss-making year”) the person makes a loss in a UK property business or overseas property business (whether carried on alone or in partnership), and
  - (b) the loss has a capital allowances connection or the business has a relevant agricultural connection.
- (2) The claim is for the applicable amount of the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year, or
  - (b) for the next tax year.

(See Step 2 of the calculation in section 23.)
- (3) The claim must specify the tax year for which the deduction is to be made.
- (4) But if the applicable amount of the loss is not deducted in full in giving effect to a claim for the specified tax year, the person may make a separate claim for property loss relief against general income for the other tax year.
- (5) For this purpose “the other tax year” means the tax year which was not specified in the claim already made, but which could have been specified.
- (6) This section needs to be read with—
  - (a) section 121 (how relief works),
  - (b) section 122 (meaning of “the applicable amount of the loss”),
  - (c) section 123 (meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”), and
  - (d) section 124 (supplementary).

### **121 How relief works**

- (1) This subsection explains how the deductions are to be made.

The amount of the applicable amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

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Deduct the applicable amount of the loss in calculating the person's net income for the specified tax year.

#### *Step 2*

This step applies if the applicable amount of the loss has not been deducted in full and the person makes a separate claim for the other tax year.

Deduct the part of the applicable amount of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

#### *Other relief*

If the applicable amount of the loss has not been deducted in full at Steps 1 and 2, relief is given under section 118 for the part not so deducted.

- (2) There is a priority rule if—
- (a) a person makes a claim for property loss relief against general income (“the prior claim”) in respect of a loss made in a tax year,
  - (b) the prior claim specifies the next tax year as the one for which the deduction is to be made (“the relevant tax year”),
  - (c) the person makes another claim for property loss relief against general income in respect of a loss made in the relevant tax year, and
  - (d) that other claim also specifies the relevant tax year as the one for which the deduction is to be made.
- (3) The rule is that priority is given to making deductions under the prior claim.

## **122 Meaning of “the applicable amount of the loss”**

- (1) This section defines “the applicable amount of the loss” for the purposes of sections 120 and 121.
- (2) “The applicable amount of the loss” is—
- (a) the amount of the loss, or
  - (b) if less, the amount arising from the relevant connection (see subsections (3) to (5)).
- (3) If—
- (a) the loss has a capital allowances connection, but
  - (b) the business does not have a relevant agricultural connection,
- the amount arising from the relevant connection is the amount (“the net capital allowances”) by which the capital allowances exceed the charges under CAA 2001.
- (4) If—
- (a) the business has a relevant agricultural connection, but
  - (b) the loss does not have a capital allowances connection,
- the amount arising from the relevant connection is the amount of the allowable agricultural expenses.
- (5) If—
- (a) the loss has a capital allowances connection, and
  - (b) the business has a relevant agricultural connection,

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the amount arising from the relevant connection is the sum of the net capital allowances and the amount of the allowable agricultural expenses.

### **123 Meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”**

- (1) This section applies for the purposes of sections 120 and 122.
- (2) The loss has a capital allowances connection if, in calculating the loss—
  - (a) the amount of the capital allowances treated as expenses of the business, exceeds
  - (b) the amount of any charges under CAA 2001 treated as receipts of the business.
- (3) The business has a relevant agricultural connection if—
  - (a) the business is carried on in relation to land that consists of or includes an agricultural estate, and
  - (b) allowable agricultural expenses deducted in calculating the loss are attributable to the estate.
- (4) “Agricultural estate” means land—
  - (a) which is managed as one estate, and
  - (b) which consists of or includes land occupied wholly or mainly for purposes of husbandry.
- (5) “Allowable agricultural expenses”, in relation to an agricultural estate, means any expenses attributable to the estate which are deductible—
  - (a) in respect of maintenance, repairs, insurance or management of the estate, and
  - (b) otherwise than in respect of interest payable on a loan.
- (6) But expenses attributable to the parts of the estate used wholly for purposes other than those of husbandry are to be ignored.
- (7) And if parts of the estate are used both—
  - (a) for purposes of husbandry, and
  - (b) for other purposes,
 the expenses in respect of those parts are to be reduced so far as those parts are used for the other purposes.

### **124 Supplementary**

- (1) A claim for property loss relief against general income must be made on or before the first anniversary of the normal self-assessment filing date for the tax year specified in the claim.
- (2) If a loss has previously been carried forward under section 118, the claim must be accompanied by the amendments of any return made under—
  - (a) section 8 of TMA 1970, or
  - (b) section 8A of TMA 1970,
 that are necessary to give effect to section 118(5) (reducing the amount of the loss carried forward (if necessary, to nil)).



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### *Post-cessation property relief*

## **125 Post-cessation property relief**

- (1) A person may make a claim for post-cessation property relief if, after permanently ceasing to carry on a UK property business (whether carried on alone or in partnership)  
—
  - (a) the person makes a qualifying payment, or
  - (b) a qualifying event occurs in relation to a debt owed to the person, and the payment is made, or the event occurs, within 7 years of that cessation.
- (2) If the claim is made in respect of a payment, the claim is for the payment to be deducted in calculating the person's net income for the tax year in which the payment is made (see Step 2 of the calculation in section 23).
- (3) If the claim is made in respect of an event, the claim is for the appropriate amount of the debt to be deducted in calculating the person's net income for the relevant tax year (see Step 2 of the calculation in section 23).
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the tax year for which the deduction is to be made.
- (5) If—
  - (a) the person is a company within the charge to income tax under Chapter 3 of Part 3 of ITTOIA 2005 in respect of a UK property business, and
  - (b) the company ceases at any time to be within that tax charge in respect of the business,the company is treated for the purposes of this section as permanently ceasing to carry on the business at that time.
- (6) The following provisions apply for the purposes of post-cessation property relief as they apply for the purposes of post-cessation trade relief (but as if any reference to a trade were to a UK property business)—
  - (a) section 97 (meaning of “qualifying payment”),
  - (b) section 98 (meaning of “qualifying event” etc),
  - (c) section 99 (reduction of relief for unpaid trade expenses), and
  - (d) section 100 (prohibition against double counting).

## **126 Treating excess post-cessation property relief as CGT loss**

A person who cannot deduct all of an amount under a claim for post-cessation property relief may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261D and 261E of TCGA 1992.

### *Furnished holiday accommodation*

## **127 UK furnished holiday lettings business treated as trade**

- (1) This section applies if, in a tax year, a person carries on a UK furnished holiday lettings business.

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- (2) “UK furnished holiday lettings business” means a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).
- (3) For the purposes of this Part (but as modified below) the person is treated instead as carrying on in the tax year a single trade—
  - (a) which consists of every commercial letting of furnished holiday accommodation comprised in the person's UK furnished holiday lettings business, and
  - (b) the profits of which are chargeable to income tax.
- (4) Chapter 2 applies as if section 75 (trade leasing allowances given to individuals) were omitted.
- (5) Early trade losses relief is not available to an individual for a loss made in a tax year if the individual first let any of the relevant accommodation as furnished accommodation more than 3 years before the beginning of the tax year.
- (6) Accommodation is relevant if the trade that is treated as carried on in the tax year consists of or includes the letting of the accommodation.
- (7) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.

## CHAPTER 5

### LOSSES IN AN EMPLOYMENT OR OFFICE

#### 128 Employment loss relief against general income

- (1) A person may make a claim for employment loss relief against general income if the person—
  - (a) is in employment or holds an office in a tax year, and
  - (b) makes a loss in the employment or office in the tax year (“the loss-making year”).
- (2) The claim is for the loss to be deducted in calculating the person's net income—
  - (a) for the loss-making year,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)
- (3) If the claim is made in relation to both tax years, the claim must specify the year for which a deduction is to be made first.
- (4) Otherwise the claim must specify either the loss-making year or the previous tax year.
- (5) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the loss-making year.

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- (6) Nothing in this section prevents a person who makes a claim specifying a particular tax year in respect of a loss from making a further claim specifying the other tax year in respect of the unused part of the loss.
- (7) This Chapter is subject to paragraph 2 of Schedule 1B to TMA 1970 (claims for loss relief involving two or more years).
- (8) This section needs to be read with section 129 (how relief works).

## **129 How relief works**

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the loss in calculating the person's net income for the specified tax year.

### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the person's net income for the other tax year.

- (2) There is a priority rule if a person—
  - (a) makes a claim for employment loss relief against general income (“the first claim”) in relation to the loss-making year, and
  - (b) makes a separate claim in respect of a loss made in the following tax year in relation to the same tax year as the first claim.
- (3) The rule is that priority is given to making deductions under the first claim.
- (4) For this purpose a “separate claim” means—
  - (a) a claim for employment loss relief against general income, or
  - (b) a claim for trade loss relief against general income (see sections 64 to 70).

## **130 Treating loss in employment or office as CGT loss**

A person who cannot deduct all of a loss in an employment or office under a claim for employment loss relief against general income may be able to treat the unused part as an allowable loss for capital gains tax purposes: see sections 261B and 261C of TCGA 1992.

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## CHAPTER 6

### LOSSES ON DISPOSAL OF SHARES

#### *Share loss relief against general income*

#### **131 Share loss relief**

- (1) An individual is eligible for relief under this Chapter (“share loss relief”) if—
- (a) the individual incurs an allowable loss for capital gains tax purposes on the disposal of any shares in any tax year (“the year of the loss”), and
  - (b) the shares are qualifying shares.

This is subject to subsections (3) and (4) and section 136(2).

- (2) Shares are qualifying shares for the purposes of this Chapter if—
- (a) EIS relief is attributable to them, or
  - (b) if EIS relief is not attributable to them, they are shares in a qualifying trading company which have been subscribed for by the individual.
- (3) Subsection (1) applies only if the disposal of the shares is—
- (a) by way of a bargain made at arm's length,
  - (b) by way of a distribution in the course of dissolving or winding up the company,
  - (c) a disposal within section 24(1) of TCGA 1992 (entire loss, destruction, dissipation or extinction of asset), or
  - (d) a deemed disposal under section 24(2) of that Act (claim that value of the asset has become negligible).
- (4) Subsection (1) does not apply to any allowable loss incurred on the disposal if—
- (a) the shares are the subject of an exchange or arrangement of the kind mentioned in section 135 or 136 of TCGA 1992 (company reconstructions etc), and
  - (b) because of section 137 of that Act, the exchange or arrangement involves a disposal of the shares.

#### **132 Entitlement to claim**

- (1) An individual who is eligible for share loss relief may make a claim for the loss to be deducted in calculating the individual's net income—
- (a) for the year of the loss,
  - (b) for the previous tax year, or
  - (c) for both tax years.

(See Step 2 of the calculation in section 23.)

- (2) If the claim is made in relation to both tax years, the claim must specify the year for which a deduction is to be made first.
- (3) Otherwise the claim must specify either the year of the loss or the previous tax year.
- (4) The claim must be made on or before the first anniversary of the normal self-assessment filing date for the year of the loss.

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### 133 How relief works

- (1) This subsection explains how the deductions are to be made.

The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the loss in calculating the individual's net income for the specified tax year.

#### *Step 2*

This step applies only if the claim is made in relation to both tax years.

Deduct the part of the loss not deducted at Step 1 in calculating the individual's net income for the other tax year.

- (2) Subsection (1) is subject to sections 136(5) and 147 (which set limits on the amounts of share loss relief that may be obtained in particular cases).
- (3) If an individual—
- (a) makes a claim for share loss relief against income (“the first claim”) in relation to the year of the loss, and
  - (b) makes a separate claim for share loss relief against income in respect of a loss made in the following tax year in relation to the same tax year as the first claim, priority is to be given to making deductions under the first claim.
- (4) Any share loss relief claimed in respect of any income has priority over any relief claimed in respect of that income under section 64 (deduction of losses from general income) or 72 (early trade losses relief).
- (5) A claim for share loss relief does not affect any claim for a deduction under TCGA 1992 for so much of the allowable loss as is not deducted under subsection (1).

*Shares to which EIS relief is not attributable*

### 134 Qualifying trading companies

- (1) In relation to shares to which EIS relief is not attributable (see section 131(2)(b)), a qualifying trading company is a company which meets each of conditions A to D.
- (2) Condition A is that the company either—
- (a) meets each of the following requirements on the date of the disposal—
    - (i) the trading requirement (see section 137),
    - (ii) the control and independence requirement (see section 139),
    - (iii) the qualifying subsidiaries requirement (see section 140), and
    - (iv) the property managing subsidiaries requirement (see section 141), or
  - (b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.
- (3) Condition B is that the company either—
- (a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or

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- (b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.
- (4) Condition C is that the company—
  - (a) met the gross assets requirement (see section 142) both immediately before and immediately after the issue of the shares in respect of which the share loss relief is claimed, and
  - (b) met the unquoted status requirement (see section 143) at the relevant time within the meaning of that section.
- (5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—
  - (a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and
  - (b) ending with the date of the disposal.

### 135 Subscriptions for shares

- (1) This section has effect in relation to shares to which EIS relief is not attributable.
- (2) An individual subscribes for shares in a company if they are issued to the individual by the company in consideration of money or money's worth.
- (3) If—
  - (a) an individual (“A”) subscribed for, or is treated under subsection (4) or this subsection as having subscribed for, any shares,
  - (b) A transferred the shares to another individual (“B”) during their lives, and
  - (c) A was B's spouse or civil partner at the time of the transfer,
 B is treated as having subscribed for the shares.
- (4) If—
  - (a) an individual has subscribed for, or is treated under subsection (3) or this subsection as having subscribed for, any shares, and
  - (b) any corresponding bonus shares are subsequently issued to the individual,
 the individual is treated as having subscribed for the bonus shares.

### 136 Disposals of new shares

- (1) This section has effect in relation to shares to which EIS relief is not attributable.
- (2) If—
  - (a) an individual disposes of shares (“the new shares”), and
  - (b) the new shares are, by virtue of section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal), identified with other shares (“the old shares”) previously held by the individual,
 the individual is not eligible for share loss relief on the disposal of the new shares unless one of conditions A and B is met.

This is subject to section 145(3).

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- (3) Condition A is that the individual would have been eligible for share loss relief on a disposal of the old shares—
  - (a) if the individual had incurred an allowable loss in disposing of them by way of a bargain made at arm's length on the occasion of the disposal that would have occurred but for section 127 of TCGA 1992, and
  - (b) where applicable, if this Chapter had then been in force.
- (4) Condition B is that the individual gave for the new shares consideration in money or money's worth other than consideration of the kind mentioned in paragraph (a) or (b) of section 128(2) of TCGA 1992 (“new consideration”).
- (5) If the individual relies on condition B, the amount of share loss relief on the disposal of the new shares must not exceed the amount or value of the new consideration taken into account as a deduction in calculating the amount of the loss incurred on the disposal.

*Qualifying trading companies: the requirements*

**137 The trading requirement**

- (1) The trading requirement is that—
  - (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
  - (a) the company is treated as a parent company for the purposes of subsection (1)(b), and
  - (b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
  - (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

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- (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
  - (i) that a qualifying trade to be carried on by a group company will be derived, or
  - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—
  - “excluded activities” has the meaning given by section 192 read with sections 193 to 199,
  - “group” means a parent company and its qualifying subsidiaries,
  - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
  - “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,
  - “mainly trading subsidiary” means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,
  - “non-qualifying activities” means—
    - (a) excluded activities, and
    - (b) activities (other than research and development) carried on otherwise than in the course of a trade,
  - “parent company” means a company that has one or more qualifying subsidiaries,
  - “qualifying subsidiary” is to be read in accordance with section 191,
  - “qualifying trade” has the meaning given by section 189, and
  - “research and development” has the meaning given by section 1006.
- (8) In sections 189(1)(b) and 194(4)(c) (as applied by subsection (7) for the purposes of the definitions of “excluded activities” and “qualifying trade”) “period B” means the continuous period that is relevant for the purposes of section 134(3).
- [<sup>F41</sup>(9) In section 195 as applied by subsection (7) for the purposes mentioned in subsection (8), references to the issuing company are to be read as references to the company mentioned in subsection (1).]

#### Textual Amendments

**F41** S. 137(9) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(5\), 13](#)

### 138 Ceasing to meet trading requirement because of administration or receivership

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.



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This has effect subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

- (a) the entry into administration or receivership, and
- (b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 134(2)—

- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or
- (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

(4) Subsection (3) does not apply if —

- (a) the winding up is for genuine 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, and
- (b) the company continues, during the winding up, to be a trading company.

(5) References in this section to a company being “in administration” or “in receivership” are to be read in accordance with section 252.

## **139 The control and independence requirement**

(1) The control element of the requirement is that—

- (a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and
- (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 134(3) or otherwise).

(2) The independence element of the requirement is that—

- (a) the company must not—
  - (i) be a 51% subsidiary of another company, or
  - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
- (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 134(3) or otherwise).

(3) This section is subject to section 145(3).

(4) In this section—

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“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

“control”, in subsection (1)(a), is to be read in accordance with section 416(2) to (6) of ICTA,

“qualifying subsidiary” is to be read in accordance with section 191.

#### **140 The qualifying subsidiaries requirement**

- (1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.
- (2) In this section “qualifying subsidiary” is to be read in accordance with section 191.

#### **141 The property managing subsidiaries requirement**

- (1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.
- (2) In this section—
  - “property managing subsidiary” has the meaning given by section 188(2),
  - “qualifying 90% subsidiary” has the meaning given by section 190.

#### **142 The gross assets requirement**

- (1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets—
  - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
  - (b) must not exceed £8 million immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.
- (4) In this section—
  - “group” means a parent company and its qualifying subsidiaries,
  - “parent company” means a company that has one or more qualifying subsidiaries,
  - “qualifying subsidiary” is to be read in accordance with section 191, and
  - “single company” means a company that does not have one or more qualifying subsidiaries.

#### **143 The unquoted status requirement**

- (1) The unquoted status requirement is that, at the time (“the relevant time”) at which the shares in respect of which the share loss relief is claimed are issued—

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- (a) the company must be an unquoted company,
  - (b) there must be no arrangements in existence for the company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 145 applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—
- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section [F42 1005(1)(b)], or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c),
- if the order was made after the relevant time.
- (3) In this section—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable, and
  - “unquoted company” has the meaning given by section 184(2).

#### Textual Amendments

**F42** Word in s. 143(2)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(2\)](#)

### 144 Power to amend requirements by Treasury order

The Treasury may by order make such amendments of sections 137 to 143 as they consider appropriate.

*Qualifying trading companies: supplementary*

### 145 Relief after an exchange of shares for shares in another company

- (1) This section and section 146 apply in relation to shares to which EIS relief is not attributable if—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and

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- (e) by virtue of section 127 of TCGA 1992 as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.

In this subsection references to shares, except in the expressions “shares to which EIS relief is not attributable” and “subscriber shares”, include securities.

- (2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.
- (3) Nothing in—
  - (a) section 136(2) (disposals of new shares), and
  - (b) section 139 (the control and independence requirement),
 applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) or, in the case of section 139, arrangements with a view to such an exchange.
- (4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (5) References in section 146 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

## **146 Substitution of new shares for old shares**

- (1) Subsection (2) applies if, in the case of any new shares held by an individual or by a nominee for an individual, the old shares for which they were exchanged were shares—
  - (a) to which EIS relief was not attributable, and
  - (b) which had been subscribed for by the individual.
- (2) This Chapter has effect in relation to any subsequent disposal or other event as if—
  - (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued by the new company at the time when the old shares were issued to the individual by the old company, and
  - (c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.
- [<sup>F43</sup>(3) Nothing in subsection (2) applies in relation to section 195(7) as applied by section 137(7) for the purposes mentioned in section 137(8).]

### **Textual Amendments**

**F43** S. 146(3) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(6\), 13](#)

## *Limits on share loss relief and mixed holdings*

## **147 Limits on share loss relief**

- (1) Subsection (2) applies if—

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- (a) an individual disposes of any qualifying shares,
  - (b) those shares either—
    - (i) form part of a section 104 holding or a 1982 holding at the time of the disposal, or
    - (ii) formed part of such a holding at an earlier time, and
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal.
- (2) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares had not formed part of the holding.
- (3) Subsection (4) applies if—
  - (a) an individual disposes of any qualifying shares,
  - (b) the qualifying shares, and other shares that are not capable of being qualifying shares, are for the purposes of TCGA 1992 to be treated as acquired by a single transaction by virtue of section 105(1)(a) of that Act (disposal of shares acquired on same day etc), and
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal.
- (4) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if—
  - (a) the qualifying shares were to be treated as acquired by a single transaction, and
  - (b) the other shares were not to be so treated.
- (5) Subsection (6) applies if—
  - (a) an individual disposes of any qualifying shares,
  - (b) the qualifying shares (taken as a single asset), and other shares in the same company that are not capable of being qualifying shares (taken as a single asset), are for the purposes of TCGA 1992 to be treated as the same asset by virtue of section 127 of that Act (reorganisation etc treated as not involving disposal), and
  - (c) the individual makes a claim under section 132 in respect of a loss incurred on the disposal,

References in this subsection and subsection (6) to other shares in the same company include debentures of the same company.
- (6) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares and the other shares in the same company were not to be treated as the same asset.
- (7) In this section—
  - “section 104 holding” has the meaning given by section 104(3) of TCGA 1992, and
  - “1982 holding” has the meaning given by section 109(1) of that Act.
- (8) For the purposes of this section and section 148, shares to which EIS relief is not attributable are not capable of being qualifying shares at any time if—
  - (a) the individual acquired the shares otherwise than by subscription,
  - (b) condition C in section 134(4) was not met in relation to the issue of the shares,or

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- (c) condition D in section 134(5) would not be met if the shares were disposed of at that time.
- (9) For the purposes of subsection (5), shares to which EIS relief is not attributable are not capable of being qualifying shares at any time if they are shares of a different class from the shares mentioned in paragraph (a) of that subsection.

## **148 Disposal of shares forming part of mixed holding**

- (1) This section applies if an individual disposes of shares forming part of a mixed holding of shares, that is, a holding of shares in a company which includes—
  - (a) shares that are not capable of being qualifying shares, and
  - (b) other shares.
- (2) Any question—
  - (a) whether a disposal by the individual of shares forming part of the mixed holding is of qualifying shares, or
  - (b) as to which of any qualifying shares acquired by the individual at different times such a disposal relates to,
 is to be determined as provided by the following provisions of this section.
- (3) Any such question as is mentioned in subsection (2) is to be determined—
  - (a) except in a case falling within paragraph (b)—
    - (i) in accordance with subsection (4), and
    - (ii) in the case of shares which under that subsection are identified with the whole or any part of a section 104 holding or a 1982 holding, in accordance with subsection (5),
  - (b) in the case of a mixed holding which includes any of the following—
    - (i) shares issued before 1 January 1994 in respect of which relief has been given under Chapter 3 of Part 7 of ICTA (business expansion scheme) and has not been withdrawn,
    - (ii) shares to which EIS relief is attributable, and
    - (iii) shares to which deferral relief (within the meaning of Schedule 5B to TCGA 1992) is attributable,
 in accordance with subsection (6).
- (4) For the purposes of subsection (3)(a)(i), the question is to be determined by identifying the shares disposed of in accordance with sections 105 to 105B and 106A of TCGA 1992.
- (5) For the purposes of subsection (3)(a)(ii), the question is to be determined by treating the disposal and any previous disposal by the individual out of the section 104 or 1982 holding as relating to shares acquired later rather than earlier.
- (6) For the purposes of subsection (3)(b), the question is to be determined—
  - (a) in relation to shares issued before 1 January 1994, as provided by subsections (3) to (4C) of section 299 of ICTA (as that section has effect in relation to shares so issued),
  - (b) in relation to shares issued on or after that date and before 6 April 2007, as provided by subsections (6) to (6D) of that section (as that section has effect in relation to shares so issued), and

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- (c) in relation to shares issued on or after 6 April 2007, as provided by section 246 of this Act.
- (7) Any such question as is mentioned in subsection (2) which cannot be determined as provided by subsections (3) to (6) is to be determined on a just and reasonable basis.
- (8) In this section “holding” means any number of shares of the same class held by one individual in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.  
For this purpose—
  - (a) shares are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt in on such an exchange, and
  - (b) subsection (4) of section 104 of TCGA 1992 applies as it applies for the purposes of subsection (1) of that section.
- (9) In this section “section 104 holding” and “1982 holding” have the same meaning as in section 147.

#### **149 Section 148: supplementary**

- (1) In the case of a disposal of shares within section 148(3)(b)(ii) or (iii) to which section 105A of TCGA 1992 (election for alternative treatment: approved-scheme shares) applies—
  - (a) section 299 of ICTA (identification of shares) has effect for the purposes of section 148(6)(b), and
  - (b) section 246 of this Act has effect for the purposes of section 148(6)(c), with the same modifications as those with which they have effect for the purposes of section 150A(4) of TCGA 1992 (enterprise investment schemes).
- (2) In a case to which section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal) applies (including a case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of section 148 as acquired when the original shares were acquired.
- (3) Any shares held or disposed of by a nominee or bare trustee for an individual are treated for the purposes of section 148 as held or disposed of by that individual.
- (4) In this section “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

#### *Miscellaneous and supplementary*

#### **150 Deemed time of issue for certain shares**

- (1) In this section “the relevant provisions” means—
  - section 134(5)(a),
  - section 142(1)(a) and (2)(a),
  - section 143(1), and
  - section 146(2)(b).

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(2) If—

- (a) any shares were issued to an individual (“A”) or are treated under subsection (3) or this subsection as having been issued to A at a particular time,
- (b) the shares are transferred by A to another individual (“B”) during their lives, and
- (c) A was B's spouse or civil partner at the time of the transfer,

the shares are treated for the purposes of the relevant provisions as having been issued to B at the time they were issued to A or are treated as having been so issued.

(3) If—

- (a) any shares (“the original shares”) have been issued to an individual, or are treated under subsection (2) or this subsection as having been issued to an individual at a particular time, and
- (b) any corresponding bonus shares are subsequently issued to the individual,

the bonus shares are treated for the purposes of the relevant provisions as having been issued at the time the original shares were issued to the individual or are treated as having been so issued.

## 151 Interpretation of Chapter

(1) In this Chapter (subject to subsections (2) to (8))—

“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),

“civil partner” refers to one of two civil partners who are living together,

“corresponding bonus shares”, in relation to any shares, means bonus shares which—

- (a) are issued in respect of those shares, and
- (b) are in the same company, are of the same class, and carry the same rights, as those shares,

“EIS relief” means—

- (a) EIS income tax relief under Part 5 of this Act, and
- (b) in relation to shares issued after 31 December 1993 and before 6 April 2007, relief under Chapter 3 of Part 7 of ICTA (enterprise investment scheme),

“excluded company” means a company which—

- (a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,
- (b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,
- (c) is a holding company of a group other than a trading group, or
- (d) is a building society or a registered industrial and provident society,

“group” (except in sections 137 and 142) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,

“holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,



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“investment company” has the meaning given by section 130 of ICTA except that it does not include the holding company of a trading group,

“qualifying shares” has the meaning given by section 131(2),

“registered industrial and provident society” means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),

“shares”—

(a) includes stock, but

(b) does not include shares or stock not forming part of a company's ordinary share capital,

“share loss relief” has the meaning given by section 131(1),

“spouse” refers to one of two spouses who are living together,

“trading company” means a company other than an excluded company which is—

(a) a company whose business consists wholly or mainly of the carrying on of a trade or trades, or

(b) the holding company of a trading group,

“trading group” means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades, and

“the year of the loss” has the meaning given by section 131(1).

- (2) For the purposes of the definition of “corresponding bonus shares” in subsection (1), shares are not treated as being of the same class unless they would be so treated if dealt in on <sup>F44</sup>a recognised stock exchange].
- (3) In section 148(3)(b) and (6) “shares” does not include stock.
- (4) Except as provided by subsection (5), paragraph (b) of that definition does not apply in the definition of “excluded company” in subsection (1) or in sections 145(1) to (4) and 147(3) to (6), (8) and (9).
- (5) Paragraph (b) of that definition applies in relation to the expression “shares to which EIS relief is not attributable” in section 145(1).
- (6) The definition of “shares” in subsection (1) does not apply in sections 137(5)(a), 142(3) and 143(1)(c) and (2).
- (7) For the purposes of the definition of “trading group” in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.
- (8) For the purposes of this Chapter a disposal of shares which results in an allowable loss for capital gains tax purposes is treated as made at the time when the disposal is made or treated as made for the purposes of TCGA 1992.

#### Textual Amendments

**F44** Words in s. 151(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(3\)](#)

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## CHAPTER 7

### LOSSES FROM MISCELLANEOUS TRANSACTIONS

#### *Loss relief against miscellaneous income*

#### **152 Losses from miscellaneous transactions**

- (1) A person may make a claim for loss relief against miscellaneous income if in a tax year (“the loss-making year”) the person makes a loss in any relevant transaction.
- (2) A transaction is a relevant one if, assuming there were profits or other income arising from it—
  - (a) those profits or that other income would be section 1016 income, and
  - (b) the person would be liable for income tax charged on those profits or that other income.
- (3) The claim is for the loss to be deducted in calculating the person's net income for the loss-making year and subsequent tax years (see Step 2 of the calculation in section 23).
- (4) But a deduction for that purpose is to be made only from the person's miscellaneous income.
- (5) A person's miscellaneous income is so much of the person's total income as is—
  - (a) income or gains arising from transactions, and
  - (b) section 1016 income.

This is subject to subsection (6).
- (6) If the loss was made by the person as a partner in a partnership, the transactions covered by subsection (5)(a) are limited to transactions entered into by the partnership.
- (7) In calculating a person's net income for a tax year, deductions under this section from the person's miscellaneous income are to be made before deductions of any other reliefs from that miscellaneous income.
- (8) In this section “section 1016 income” means income on which income tax is charged under or by virtue of any provision to which section 1016 applies [<sup>F45</sup>except that income on which income tax is charged under section 761(1)(b)(i) of ICTA is not “section 1016 income” for the purposes of subsection (2)(a)].
- (9) This section needs to be read with—
  - (a) section 153 (how relief works),
  - (b) section 154 (transactions in deposit rights), and
  - (c) section 155 (claims).

#### **Textual Amendments**

**F45** Words in s. 152(8) inserted (with effect in accordance with s. 57(9) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 57\(5\)](#)

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## **153 How relief works**

This section explains how the deductions are to be made. The amount of the loss to be deducted at any step is limited in accordance with section 25(4) and (5).

### *Step 1*

Deduct the loss from the miscellaneous income for the loss-making year.

### *Step 2*

Deduct from the miscellaneous income for the next tax year the amount of the loss not previously deducted.

### *Step 3*

Continue to apply Step 2 in relation to miscellaneous income for subsequent tax years until all the loss is deducted.

## *Deposit rights*

## **154 Transactions in deposit rights**

- (1) This section applies if—
  - (a) a person makes a loss from the disposal or exercise of a right to receive an amount,
  - (b) the disposal or exercise is a transaction in a deposit under Chapter 11 of Part 4 of ITTOIA 2005 (see subsection (2)), and
  - (c) the person's total income for a tax year includes interest payable on the amount.
- (2) The disposal or exercise is a transaction in a deposit under Chapter 11 of Part 4 of ITTOIA 2005 if, assuming there were a profit or gain from it, the profit or gain would be charged to tax under that Chapter.
- (3) For the purposes of the giving of loss relief against miscellaneous income for the loss mentioned in subsection (1)(a), the interest mentioned in subsection (1)(c) is treated as miscellaneous income for the tax year.

## *Supplementary*

## **155 Time limit for claiming relief**

- (1) So far as a claim for loss relief against miscellaneous income concerns the amount of the loss for a tax year, it must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year.
- (2) But—
  - (a) the question whether, and
  - (b) if so, how much,loss relief against miscellaneous income should be given for a tax year may be the subject of a separate claim made on or before the fifth anniversary of the normal self-assessment filing date for the tax year.

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## PART 5

### ENTERPRISE INVESTMENT SCHEME

#### CHAPTER 1

##### INTRODUCTION

##### *EIS relief*

#### **156 Meaning of “EIS relief” and commencement**

- (1) This Part provides for EIS income tax relief (“EIS relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares.
- (2) In this Part “EIS” stands for the enterprise investment scheme.
- (3) In accordance with section 1034(3), this Part has effect only in relation to shares issued on or after 6 April 2007.

This is subject to Schedule 2 (transitional provisions and savings).

#### **157 Eligibility for EIS relief**

- (1) An individual (“the investor”) is eligible for EIS relief in respect of an amount subscribed by the investor on the investor's own behalf for an issue of shares in a company (“the issuing company”) if—
  - (a) the shares (“the relevant shares”) are issued to the investor,
  - (b) the investor is a qualifying investor in relation to the relevant shares (see Chapter 2),
  - (c) the general requirements (including requirements as to the purpose of the issue of shares and the use of money raised) are met in respect of the relevant shares (see Chapter 3), and
  - (d) the issuing company is a qualifying company in relation to the relevant shares (see Chapter 4).
- (2) To be eligible for EIS relief in respect of an amount subscribed for shares issued by the issuing company in a tax year, the investor must have subscribed at least £500 for shares in the issuing company which—
  - (a) meet the requirements of section 173(2) (ordinary shares which carry no preferential rights or rights of redemption), and
  - (b) are issued in the tax year.
- (3) Subsection (2) is subject to section 251(3) (approved investment funds).

#### **158 Form and amount of EIS relief**

- (1) If an individual—
  - (a) is eligible for EIS relief in respect of any amount subscribed for shares, and
  - (b) makes a claim in respect of all or some of the shares included in the issue,

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the individual is entitled to a tax reduction for the tax year in which the shares were issued (“the current year”).

This is subject to the provisions of this Part.

(2) The amount of the tax reduction to which the individual is entitled is the amount equal to tax at the savings rate for the current year on—

- (a) the amount or, as the case may be, the sum of the amounts subscribed for shares issued in that year in respect of which the individual is eligible for and claims EIS relief, or
- (b) if less, £400,000.

(3) The tax reduction is given effect at Step 6 of the calculation in section 23.

(4) Subject to subsection (5), if in the case of any issue of shares—

- (a) which are issued before 6 October in the current year, and
- (b) in respect of the amount subscribed for which the individual is eligible for EIS relief,

the individual so claims, subsections (1) and (2) apply as if, in respect of such part of that issue as may be specified in the claim, the shares had been issued in the preceding tax year; and the individual's liability to tax for both tax years is determined accordingly.

(5) But—

- (a) no more than half the shares included in an issue may be treated under subsection (4) as issued in the preceding tax year, and
- (b) the total amount subscribed for any shares (included in any issues) treated under subsection (4) as issued in that year is not to exceed £50,000.

### *Miscellaneous*

## **159 Periods A, B and C**

(1) This section applies for the purposes of this Part in relation to any shares issued by a company.

(2) “Period A” means the period—

- (a) beginning—
  - (i) with the incorporation of the company, or
  - (ii) if the company was incorporated more than two years before the date on which the shares were issued, two years before that date, and
- (b) ending immediately before the termination date relating to the shares (see section 256).

(3) “Period B” means the period—

- (a) beginning with the issue of the shares, and
- (b) ending immediately before the termination date relating to the shares.

(4) “Period C” means the period—

- (a) beginning 12 months before the issue of the shares, and
- (b) ending immediately before the termination date relating to the shares.

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## **160 Overview of other Chapters of Part**

In this Part—

- (a) Chapter 5 provides for the attribution of EIS relief to shares and the making of claims for such relief,
- (b) Chapter 6 provides for EIS relief to be withdrawn or reduced in the circumstances mentioned in that Chapter,
- (c) Chapter 7 makes provision with respect to the procedure for the withdrawal or reduction of EIS relief, and
- (d) Chapter 8 contains supplementary and general provisions.

## **161 Other tax reliefs relating to EIS**

- (1) Chapter 6 of Part 4 (losses on disposal of shares) provides for relief against the income of an individual who incurs an allowable loss for capital gains tax purposes on a disposal of shares to which EIS relief is attributable.
- (2) Subsection (3) of section 392 (loan to buy interest in close company) provides that subsection (2)(a) of that section does not apply if at any time—
  - (a) the individual by whom the shares are acquired, or
  - (b) that individual's spouse or civil partner,
 makes a claim for EIS relief in respect of the shares.
- (3) Section 150A of TCGA 1992 makes provision about gains or losses on the disposal of shares to which EIS relief is attributable.
- (4) Schedule 5B to TCGA 1992 provides relief in respect of the re-investment under EIS of the proceeds of assets disposed of in circumstances where there would otherwise be a chargeable gain.
- (5) Schedule 5BA to TCGA 1992 provides for the application of taper relief in cases where EIS relief or relief under Schedule 5B to that Act applies.

## **CHAPTER 2**

### THE INVESTOR

#### *Introduction*

## **162 Overview of Chapter**

The investor is a qualifying investor in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) no connection with the issuing company (see section 163),
- (b) no linked loans (see section 164), and
- (c) no tax avoidance (see section 165).

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### *The requirements*

#### **163 The no connection with the issuing company requirement**

- (1) The investor must not be connected with the issuing company (whether before or after its incorporation) at any time during the period—
  - (a) beginning two years before the issue of the shares, and
  - (b) ending immediately before the termination date relating to the shares.
- (2) This is subject to section 169(1).

#### **164 The no linked loans requirement**

- (1) No linked loan is to be made by any person, at any time in period A, to the investor or an associate of the investor.
- (2) In this section “linked loan” means any loan which—
  - (a) would not have been made, or
  - (b) would not have been made on the same terms,if the investor had not subscribed for the relevant shares, or had not been proposing to do so.
- (3) References in this section to the making by any person of a loan to the investor or an associate of the investor include references—
  - (a) to the giving by that person of any credit to the investor or any associate of the investor, and
  - (b) to the assignment to that person of a debt due from the investor or any associate of the investor.

#### **165 The no tax avoidance requirement**

The relevant shares must be subscribed for by the investor for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### *Meaning of connection with issuing company*

#### **166 Connection with issuing company**

- (1) For the purposes of this Chapter (except section 168(4)), an individual is connected with the issuing company if the individual or an associate of the individual is connected with that company under—
  - (a) section 167 (employees, directors and partners),
  - (b) section 170 (persons interested in capital etc of company), or
  - (c) section 171 (persons subscribing for shares under certain arrangements).
- (2) See too section 257(2).

#### **167 Employees, directors and partners**

- (1) An individual is connected with the issuing company if the individual—

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- (a) is an employee of—
    - (i) the issuing company,
    - (ii) any subsidiary of the issuing company, or
    - (iii) a partner of the issuing company or any of its subsidiaries,
  - (b) is a partner of—
    - (i) the issuing company, or
    - (ii) any subsidiary of the issuing company, or
  - (c) subject to section 168, is a director of—
    - (i) the issuing company,
    - (ii) any subsidiary of the issuing company, or
    - (iii) a company which is a partner of the issuing company or any of its subsidiaries.
- (2) In subsection (1) “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% subsidiary of the issuing company, whether or not it is such a subsidiary while the individual or associate concerned is such an employee, partner or director as is mentioned in that subsection.
- (3) For the purposes of this section and sections 168 and 169, in the case of an individual (“A”) who is both a director and an employee of a company—
- (a) references (however expressed) to A in A's capacity as a director of the company include A in A's capacity as an employee of the company, but
  - (b) (apart from that) A is to be treated as a director, and not as an employee, of the company.

## 168 Directors excluded from connection

- (1) An individual is not connected with the issuing company under section 167 merely because the individual, or an associate of the individual, is a director of that or another company unless the individual or associate (or a partnership of which the individual or associate is a member)—
- (a) receives a payment from the issuing company or a related person during the period mentioned in section 163, or
  - (b) is entitled to receive such a payment in respect of that period or any part of it.
- (2) For the purposes of subsection (1) the following are ignored—
- (a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by the individual or an associate of the individual in the performance of the individual's or associate's duties as a director,
  - (b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,
  - (c) any dividend or other distribution which does not exceed a normal return on the investment,
  - (d) any payment for the supply of goods which does not exceed their market value,
  - (e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, and



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- (f) any necessary and reasonable remuneration which meets the conditions in subsection (3).
- (3) The conditions are that the remuneration—
  - (a) is paid for services rendered to the issuing company or related person in the course of a trade or profession carried on wholly or partly in the United Kingdom (not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and
  - (b) is taken into account in calculating for tax purposes the profits of that trade or profession.
- (4) In this section—
  - (a) “related person”, in relation to the issuing company, means—
    - (i) any company of which the individual or an associate of the individual is a director and which is a subsidiary or partner of the issuing company, or a partner of a subsidiary of the issuing company, and
    - (ii) any person connected with the issuing company or with a company falling within sub-paragraph (i), and
  - (b) any reference to a payment to an individual includes a payment made to the individual indirectly or to the individual's order or for the individual's benefit.
- (5) In this section and section 169 “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% subsidiary of the issuing company.

## **169 Directors qualifying for relief despite connection**

- (1) Section 163(1) does not prevent the investor from being a qualifying investor despite the investor's connection with the issuing company at any time in period A relating to the relevant shares if—
  - (a) the investor is connected with that company merely because of the investor, or the investor's associate—
    - (i) being a director of, or of a company which is a partner of, the issuing company or a subsidiary of the issuing company, and
    - (ii) being in receipt of, or entitled to receive, remuneration as such, and
  - (b) conditions A and B and (where applicable) condition C are met.
- (2) Condition A is that, in relation to the director (“D”), whether D is the investor or an associate of the investor—
  - (a) D's remuneration, or
  - (b) the remuneration to which D is entitled,consists only of remuneration which is reasonable remuneration for services rendered to the company of which D is a director in D's capacity as such.
- (3) Condition B is that the investor was issued with the relevant shares, or a previous issue of shares in the issuing company which meet the requirements of section 173(2), at a time when the investor had never been—
  - (a) connected with the issuing company, or
  - (b) involved in carrying on (whether on the investor's own account or as a partner, director or employee) the whole or any part of the trade, business or profession carried on by the issuing company or a subsidiary of that company.

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- (4) Condition C is that, if the issue of the relevant shares did not meet condition B, they were issued before the termination date relating to the latest issue of shares which met that condition.
- (5) For the purposes of condition A any necessary and reasonable remuneration falling within section 168(2)(f) is to be left out of account.
- (6) In this section “remuneration” includes any benefit or facility.

## **170 Persons interested in capital etc of company**

- (1) An individual is connected with the issuing company if the individual directly or indirectly possesses or is entitled to acquire more than 30% of—
  - (a) the ordinary share capital of the company or any subsidiary of the company,
  - (b) the loan capital and issued share capital of the company or any such subsidiary, or
  - (c) the voting power in the company or any such subsidiary.
- (2) An individual is connected with the issuing company if the individual directly or indirectly possesses or is entitled to acquire such rights as would—
  - (a) in the event of the winding up of the company or any subsidiary of the company, or
  - (b) in any other circumstances,
 entitle the individual to receive more than 30% of the assets of the company or subsidiary (“the company in question”) which would then be available for distribution to equity holders of the company in question.
- (3) For the purposes of subsection (2)—
  - (a) the persons who are equity holders of the company in question, and
  - (b) the percentage of the assets of the company in question to which the individual would be entitled,
 are determined in accordance with paragraphs 1 and 3 of Schedule 18 to ICTA.
- (4) In making that determination—
  - (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
  - (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the company in question are available for distribution to its equity holders.
- (5) An individual is not connected with a company merely because one or more shares in the company are held by the individual or by an associate of the individual, at a time when the company—
  - (a) has not issued any shares other than subscriber shares, and
  - (b) has not begun to carry on, or make preparations for carrying on, any trade or business.
- (6) An individual is connected with the issuing company if the individual has control of the issuing company or of any subsidiary of that company.
- (7) In this section “subsidiary”, in relation to the issuing company, means a company which at any time in period A is a 51% subsidiary of the issuing company, whether or

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not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.

- (8) For the purposes of this section the loan capital of a company is treated as including any debt incurred by the company—
- (a) for any money borrowed or capital assets acquired by the company,
  - (b) for any right to receive income created in favour of the company, or
  - (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).
- (9) For the purposes of this section—
- (a) an individual is treated as entitled to acquire anything which the individual is entitled to acquire at a future date or will at a future date be entitled to acquire, and
  - (b) there is attributed to any individual any rights or powers of any other person who is an associate of the individual.
- (10) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by—
- (a) the company, or
  - (b) any subsidiary of the company,
- by overdrawing an account with a person carrying on a business of banking is to be treated as loan capital of the company or subsidiary if the debt arose in the ordinary course of that business.

## **171 Persons subscribing for shares under certain arrangements**

- (1) This section applies if an individual (“A”) subscribes for shares in a company (“the company”) with which A is not connected under section 167 or 170.
- (2) If—
- (a) A subscribes for the shares as part of an arrangement, and
  - (b) the arrangement provides for another person to subscribe for shares in another company with which (assuming it to be the issuing company) A, or any other individual who is a party to the arrangement, is connected,
- A is connected with the company under this section.

## **CHAPTER 3**

### **GENERAL REQUIREMENTS**

#### *Introduction*

## **172 Overview of Chapter**

The general requirements are met in respect of the relevant shares if the requirements of this Chapter are met as to—

- (a) the shares (see section 173),

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- [<sup>F46</sup>(aa) the maximum amount raised annually through risk capital schemes (see section 173A),]
- (b) the purpose of the issue (see section 174),
  - (c) the use of the money raised (see section 175),
  - (d) the minimum period (see section 176),
  - (e) no pre-arranged exits (see section 177), and
  - (f) no tax avoidance (see section 178).

#### Textual Amendments

**F46** S. 172(aa) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 5\(2\)](#) (with [Sch. 16 para. 5\(5\)\(6\)](#))

### *The requirements*

## 173 The shares requirement

- (1) The relevant shares must meet—
  - (a) the requirements of subsection (2), and
  - (b) unless they are bonus shares, the requirements of subsection (3).
- (2) Shares meet the requirements of this subsection if they are ordinary shares which do not, at any time during period B, carry—
  - (a) any present or future preferential right to dividends or to a company's assets on its winding up, or
  - (b) any present or future right to be redeemed.
- (3) Shares meet the requirements of this subsection if they—
  - (a) are subscribed for wholly in cash, and
  - (b) are fully paid up at the time they are issued.
- (4) Shares are not fully paid up for the purposes of subsection (3)(b) if there is any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.

## [<sup>F47</sup>173A The maximum amount raised annually through risk capital schemes requirement

- (1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed £2 million.
- (2) In subsection (1), the reference to relevant investments made in the issuing company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the issuing company (whether or not it was such a subsidiary when the investment was made).
- (3) A “relevant investment” is made in a company if—
  - (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—

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- (i) a compliance statement under section 205, or
  - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),
- in respect of the shares.
- (4) An investment within subsection (3)(b) is regarded as made when the shares are issued.]

#### Textual Amendments

**F47** S. 173A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 5(3)** (with [Sch. 16 para. 5\(5\)\(6\)\(8\)](#))

#### Modifications etc. (not altering text)

**C2** S. 173A(3)(4) applied by 1992 c. 12, Sch. 5B para. 1(6) (as inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 7(2)(b)**)

### 174 The purpose of the issue requirement

The relevant shares (other than any of them which are bonus shares) must be issued in order to raise money for the purpose of a qualifying business activity.

### 175 The use of the money raised requirement

- (1) The requirement of this section is that—
- (a) at least 80% of the money raised by the issue of—
    - (i) the relevant shares (other than any of them which are bonus shares), and
    - (ii) all other shares (if any) in the company of the same class which meet the requirements of section 173(2) and are issued on the same day, is employed wholly for the purpose of the qualifying business activity for which it was raised not later than the time mentioned in subsection (3), and
  - (b) all of the money so raised is employed wholly for that purpose not later than 12 months after that time.
- (2) The requirements in subsection (1)(a) and (b) do not fail to be met merely because an amount of money which is not significant is employed for another purpose.
- (3) The time referred to in subsection (1)(a) is—
- (a) the end of the period of 12 months beginning with the issue of the shares, or
  - (b) in the case of money raised only for the purpose of an activity to which section 179(2) applies, the end of the period of 12 months beginning with—
    - (i) the issue of the shares, or
    - (ii) if later, the time when the company or a qualifying 90% subsidiary of the company begins to carry on the qualifying trade.
- (4) In determining for the purposes of subsection (3)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on by it of the trade before it became such a subsidiary is ignored.

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## 176 The minimum period requirement

- (1) The issue of shares which includes the relevant shares must meet—
  - (a) the requirement of subsection (2) in a case where the money raised by an issue of shares is raised wholly for the purpose of a qualifying business activity falling within section 179(2),
  - (b) the requirement of subsection (3) in a case where the money raised by an issue of shares is raised wholly or partly for the purpose of a qualifying business activity falling within section 179(4).
- (2) The requirement is that—
  - (a) the trade concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
  - (b) throughout that period—
    - (i) the trade must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) the trade must not have been carried on by any other person.
- (3) The requirement is that—
  - (a) the research and development concerned must have been carried on for a period of at least 4 months ending at or after the time of the issue, and
  - (b) throughout that period—
    - (i) the research and development must have been carried on by the issuing company or a qualifying 90% subsidiary of that company, and
    - (ii) the research and development must not have been carried on by any other person.
- (4) If—
  - (a) merely because of the issuing company or any other company being wound up, or dissolved without winding up—
    - (i) the trade is carried on as mentioned in subsection (2), or
    - (ii) the research and development is carried on as mentioned in subsection (3),
 for a period shorter than 4 months, and
  - (b) the winding up or dissolution—
    - (i) is for genuine commercial reasons, and
    - (ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,
 subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.
- (5) If—
  - (a) merely because of anything done as a result of the issuing company or any other company being in administration or receivership—
    - (i) the trade is carried on as mentioned in subsection (2), or
    - (ii) the research and development is carried on as mentioned in subsection (3),
 for a period shorter than 4 months, and
  - (b) the entry into administration or receivership, and everything done as a result of the company concerned being in administration or receivership—
    - (i) is for genuine commercial reasons, and

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(ii) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,  
subsection (2) or, as the case may be, (3) has effect as if it referred to that shorter period.

## **177 The no pre-arranged exits requirement**

- (1) The issuing arrangements for the relevant shares must not include—
  - (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company,
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the issuing company or a person connected with that company,
  - (c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company, or
  - (d) arrangements the main purpose or one of the main purposes of which is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in the issuing company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 247(1).
- (3) The arrangements referred to in subsection (1)(b) and (c) do not include any arrangements applicable only on the winding up of a company except in a case where—
  - (a) the issuing arrangements include arrangements for the company to be wound up, or
  - (b) the arrangements are applicable on the winding up of the company otherwise than for genuine commercial reasons.
- (4) The arrangements referred to in subsection (1)(d) do not include any arrangements which are confined to the provision—
  - (a) for the issuing company itself, or
  - (b) if the issuing company is a parent company that meets the trading requirement in section 181(2)(b), for the issuing company itself, for the issuing company itself and one or more of its subsidiaries or for one or more of its subsidiaries,of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided in normal commercial circumstances.
- (5) In this section “the issuing arrangements” means—
  - (a) the arrangements under which the shares are issued to the individual, and
  - (b) any arrangements made before the issue of the shares to the individual in relation to or in connection with that issue.

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## 178 The no tax avoidance requirement

The relevant shares must be issued for genuine commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

*Meaning of “qualifying business activity”*

## 179 Meaning of “qualifying business activity”

(1) In this Part “qualifying business activity”, in relation to the issuing company, means—

- (a) activity A, or
- (b) activity B,

if it is carried on by the company or a qualifying 90% subsidiary of the company.

This is subject to subsections (3) and (5).

(2) Activity A is—

- (a) the carrying on of a qualifying trade which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or
- (b) the activity of preparing to carry on (or preparing to carry on and then carrying on) a qualifying trade—
  - (i) which, on that date, is intended to be carried on wholly or mainly in the United Kingdom by the company or such a subsidiary, and
  - (ii) which is begun to be carried on by the company or such a subsidiary within two years after that date.

(3) But activity A is a qualifying business activity only if, at any time in period B when the qualifying trade is so carried on, the qualifying trade is carried on wholly or mainly in the United Kingdom.

(4) Activity B is the carrying on of research and development—

- (a) which, on the date the relevant shares are issued, the company or a qualifying 90% subsidiary of the company is carrying on, or which the company or such a subsidiary begins to carry on immediately afterwards, and
- (b) from which, on that date, it is intended—
  - (i) that a qualifying trade which the company or such a subsidiary will carry on wholly or mainly in the United Kingdom will be derived, or
  - (ii) that a qualifying trade which the company or such a subsidiary is carrying on, or will carry on, wholly or mainly in the United Kingdom will benefit.

(5) But activity B is a qualifying business activity only if, at any time in period B when—

- (a) the research and development is carried on, or
- (b) the qualifying trade which is derived, or which benefits or is intended to benefit, from the research and development is carried on,

the research and development or, as the case may be, the qualifying trade is carried on wholly or mainly in the United Kingdom.

(6) In determining—



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- (a) for the purposes of subsection (2)(b) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of the company, or
  - (b) for the purposes of subsection (4)(a) when research and development is begun to be carried on by such a subsidiary,
- any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary is ignored.
- (7) References in subsection (2)(b)(i) or (4)(b) to a qualifying 90% subsidiary of the company include references to any existing or future company which will be such a subsidiary at any future time.

## CHAPTER 4

### THE ISSUING COMPANY

#### *Introduction*

#### 180 Overview of Chapter

The issuing company is a qualifying company in relation to the relevant shares if the requirements of this Chapter are met as to—

- (a) trading (see section 181),
- (b) the issuing company to carry on the qualifying business activity (see section 183),
- (c) unquoted status (see section 184),
- (d) control and independence (see section 185),
- (e) gross assets (see section 186),
- [<sup>F48</sup>(ea) number of employees (see section 186A),]
- (f) qualifying subsidiaries (see section 187), and
- (g) property managing subsidiaries (see section 188).

#### Textual Amendments

**F48** S. 180(ea) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 2\(2\)](#) (with [Sch. 16 para. 2\(4\)\(5\)](#))

#### *The requirements*

#### 181 The trading requirement

- (1) The issuing company must meet the trading requirement throughout period B.
- (2) The trading requirement is that—
  - (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.

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- (3) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
- (a) the company is treated as a parent company for the purposes of subsection (2)(b), and
  - (b) the reference in subsection (2)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (4) For the purpose of subsection (2)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (5) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (6) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company,
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or
    - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (7) Any reference in subsection (6)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (8) In this section—

“incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,

“mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly, and

“non-qualifying activities” means—

- (a) excluded activities, and
- (b) activities (other than research and development) carried on otherwise than in the course of a trade.

- (9) This section is supplemented by section 189 (meaning of “qualifying trade”) and sections 192 to 199 (excluded activities).

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## **182 Ceasing to meet trading requirement because of administration or receivership**

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—

- (a) the entry into administration or receivership, and
- (b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

- (3) A company ceases to meet the trading requirement if before the end of period B—

- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or
- (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply if the winding up or dissolution is for genuine 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.

## **183 The issuing company to carry on the qualifying business activity requirement**

- (1) The requirement of this section is met in relation to the issuing company if, at no time in period B, is any of the following—

- (a) the relevant qualifying trade,
- (b) relevant preparation work (if any), and
- (c) relevant research and development (if any),

carried on by a person other than the issuing company or a qualifying 90% subsidiary of that company.

- (2) Subsection (3) has effect for the purpose of determining whether the requirement of this section is met in relation to the issuing company in a case where relevant preparation work is carried out by that company or a qualifying 90% subsidiary of that company.

- (3) The carrying on of the relevant qualifying trade by a company other than the issuing company or a subsidiary of that company is to be ignored if it takes place at any time in period B before the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.

- (4) The requirement of this section is not regarded as failing to be met in relation to the issuing company if, merely because of any act or event within subsection (5), the relevant qualifying trade—

- (a) ceases to be carried on in period B by the issuing company or any qualifying 90% subsidiary of that company, and

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- (b) is subsequently carried on in that period by a person who is not at any time in period C connected with the issuing company.
- (5) The following are acts and events within this subsection—
  - (a) anything done as a consequence of the issuing company or any other company being in administration or receivership, and
  - (b) the issuing company or any other company being wound up, or dissolved without being wound up.
- (6) Subsection (4) applies only if—
  - (a) the entry into administration or receivership, and everything done as a consequence of the company concerned being in administration or receivership, or
  - (b) the winding up or dissolution,
 is for genuine 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.
- (7) In this section—
  - “relevant preparation work” means preparations within section 179(2)
  - (b) which are the subject of the qualifying business activity mentioned in section 174,
  - “the relevant qualifying trade” means the qualifying trade which is the subject of that qualifying business activity,
  - “relevant research and development” means—
    - (a) research and development within section 179(4) which is the subject of that qualifying business activity, and
    - (b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.

## 184 The unquoted status requirement

- (1) At the beginning of period B—
  - (a) the issuing company must be an unquoted company,
  - (b) there must be no arrangements in existence for the issuing company to cease to be an unquoted company, and
  - (c) there must be no arrangements in existence for the issuing company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
    - (i) section 247 applies in relation to the exchange, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.
- (3) For the purposes of subsection (2), shares, stocks, debentures or other securities are marketed to the general public if they are—
  - (a) listed on [<sup>F49</sup>a recognised stock exchange,]
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in outside the United Kingdom by such means as may be designated.

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- (4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that provision.
- (5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (6) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company are at any subsequent time—
  - (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section [F501005(1)(b)], or
  - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (3)(b) or (c),if the order was made after the beginning of period B.

#### Textual Amendments

**F49** Words in s. 184(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(4\)\(a\)](#)

**F50** Word in s. 184(6)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(4\)\(b\)](#)

### 185 The control and independence requirement

- (1) The control element of the requirement is that—
  - (a) the issuing company must not at any time in period B control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the issuing company, and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (2) The independence element of the requirement is that—
  - (a) the issuing company must not at any time in period B—
    - (i) be a 51% subsidiary of another company, or
    - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
  - (b) no arrangements must be in existence at any time in that period by virtue of which the issuing company could fail to meet paragraph (a) (whether during that period or otherwise).
- (3) This section is subject to section 247(4) (exchange of shares).

### 186 The gross assets requirement

- (1) In the case of relevant shares issued by a single company, the value of the company's assets—
  - (a) must not exceed £7 million immediately before the relevant share issue, and

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- (b) must not exceed £8 million immediately afterwards.
- (2) In the case of relevant shares issued by a parent company, the value of the group assets—
  - (a) must not exceed £7 million immediately before the relevant share issue, and
  - (b) must not exceed £8 million immediately afterwards.
- (3) In this section—
  - (a) the relevant share issue is the issue of shares in the company that includes the relevant shares, and
  - (b) the value of the group assets is the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

### **[<sup>F51</sup>186A The number of employees requirement**

- (1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant shares are issued.
- (2) If the issuing company is a parent company, the sum of—
  - (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
 must be less than 50 when the relevant shares are issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
 

*Step 1*

Find the number of full-time employees of the company.

*Step 2*

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
  - (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.]

#### **Textual Amendments**

**F51** S. 186A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 2\(3\)](#) (with [Sch. 16 para. 2\(4\)\(5\)](#))

### **187 The qualifying subsidiaries requirement**

Any subsidiary that the issuing company has at any time in period B must be a qualifying subsidiary of the company.

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## **188 The property managing subsidiaries requirement**

- (1) Any property managing subsidiary that the issuing company has at any time in period B must be a qualifying 90% subsidiary of the company.
- (2) “Property managing subsidiary” means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

### *Definitions*

## **189 Meaning of “qualifying trade”**

- (1) For the purposes of this Part, a trade is a qualifying trade if—
  - (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not at any time in period B consist wholly or as to a substantial part in the carrying on of excluded activities.
- (2) References in this section and sections 192 to 198 to a trade are to be read without regard to the definition of “trade” in section 989.

## **190 Meaning of “qualifying 90% subsidiary”**

- (1) For the purposes of this Part, a company (“the subsidiary”) is a qualifying 90% subsidiary of another company (“the relevant company”) if the following conditions are met—
  - (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

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<sup>F52</sup>(1A) For the purposes of this Part, a company (“company A”) which is a subsidiary of another company (“company B”) is a qualifying 90% subsidiary of a third company (“company C”) if—

- (a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or
- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.

(1B) For the purposes of subsection (1A), no account is to be taken of any control company C may have of company A.

(1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1)

- (a) to (e) would be met if—
  - (a) company X were the subsidiary,
  - (b) company Y were the relevant company, and
  - (c) in subsection (1) for “at least 90%” in each place there were substituted “;100%”.]

(2) Subsections (3), (4) and (5) of section 191 (conditions not regarded as ceasing to be met because of winding up, dissolution, administration, receivership or arrangements for disposal not having tax avoidance as main purpose) apply in relation to the conditions in subsection (1)—

- (a) as they apply in relation to the conditions in subsection (2) of that section, but
- (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary”.

(3) For the purposes of subsection (1)—

- (a) the persons who are equity holders of the subsidiary, and
- (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,

are to be determined in accordance with paragraphs 1 and 3 of Schedule 18 to ICTA.

(4) In making that determination—

- (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
- (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

#### Textual Amendments

**F52** S. 190(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 16\(2\), 18](#)

## 191 Meaning of “qualifying subsidiary”

(1) For the purposes of this Part, a company (“the subsidiary”) is a qualifying subsidiary of another company (“the relevant company”) if the following conditions are met.

(2) The conditions are that—



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- (a) the subsidiary is a 51% subsidiary of the relevant company,
  - (b) no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, or dissolved without winding up, if the winding up or dissolution—
  - (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, 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 genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (5) The conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of all its interest in the subsidiary, if the disposal—
  - (a) is to be for genuine commercial reasons, and
  - (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

#### *Excluded activities*

### **192 Meaning of “excluded activities”**

- (1) The following are excluded activities for the purposes of sections 181 and 189—
  - (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
- [<sup>F53</sup>(ia) shipbuilding,
- (ib) producing coal,

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- (ic) producing steel,]
  - (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
  - (l) any activities which are excluded activities under section 199 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
- (a) section 193 (wholesale and retail distribution),
  - (b) section 194 (leasing of ships),
  - (c) section 195 (receipt of royalties and licence fees),
  - (d) section 196 (property development),
  - [<sup>F54</sup>(da) section 196A (shipbuilding),
  - (db) section 196B (producing coal),
  - (dc) section 196C (producing steel),]
  - (e) section 197 (hotels and comparable establishments), and
  - (f) section 198 (nursing homes and residential care homes).

#### Textual Amendments

- F53** S. 192(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(a\), 10](#) (with [Sch. 11 para. 11](#))
- F54** S. 192(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 5\(b\), 10](#) (with [Sch. 11 para. 11](#))

### 193 Excluded activities: wholesale and retail distribution

- (1) This section supplements section 192(1)(b).
- (2) In this section—
- (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and
  - (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.
- (3) A trade of wholesale distribution is one in which goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.
- (4) A trade of retail distribution is one in which goods are offered or exposed for sale and sold to members of the general public for their use or consumption.
- (5) A trade of wholesale or retail distribution is not an ordinary trade of wholesale or retail distribution if—
- (a) it consists to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and

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- (b) a substantial proportion of those goods are held for a period which is significantly longer than the period for which the trader would reasonably be expected to hold them while trying to dispose of them at their market value.
- (6) In determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution regard is to be had to the extent to which it has the following features—
  - (a) the goods are bought by the trader in quantities larger than those in which the trader sells them,
  - (b) the goods are bought and sold by the trader in different markets,
  - (c) the trader employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, in addition to any remuneration paid to any person connected with it,
  - (d) there are purchases from or sales to persons who are connected with the trader,
  - (e) purchases are matched with forward sales or vice versa,
  - (f) the goods are held by the trader for longer than is normal for goods of the kind in question,
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade,
  - (h) the trader does not take physical possession of the goods.
- (7) In subsection (6)—
  - (a) the features in paragraphs (a) to (c) are regarded as indications that the trade is an ordinary trade of wholesale or retail distribution, and
  - (b) those in paragraphs (d) to (h) are regarded as indications to the contrary.

## **194 Excluded activities: leasing of ships**

- (1) This section supplements section 192(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(d) as a result only of its consisting in letting ships on charter.
- (4) The requirements of this subsection are that—
  - (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company,
  - (b) every ship beneficially owned by the company is registered in the United Kingdom,
  - (c) throughout period B the company is solely responsible for arranging the marketing of the services of its ships, and
  - (d) the conditions mentioned in subsection (5) are met in relation to every letting on charter by the company.
- (5) The conditions referred to in subsection (4)(d) are—
  - (a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer,

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- (b) no provision for the grant of a new letting to end more than 12 months after the provision is made (whether in the charterparty or otherwise) is in force during the period of the letting otherwise than at the option of the charterer,
  - (c) the letting is by way of a bargain at arm's length between the company and a person who is not connected with it,
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period, and
  - (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of the company carrying on the trade (“the letting company”) the charterer is also a company and—
- (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,
- subsection (5) has effect with the omission of paragraph (c).
- (7) If any of the requirements of subsection (4) is not met in relation to any lettings of ships, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if—
- (a) those lettings, and
  - (b) any other excluded activities
- do not, taken together, amount to a substantial part of the trade.
- (8) In this section “pleasure craft” means any ship of a kind primarily used for sport or recreation.

## 195 Excluded activities: receipt of royalties and licence fees

- (1) This section supplements section 192(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 192(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—
  - [<sup>F55</sup>(a) by the issuing company, or]

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- [<sup>F55</sup>(b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset that is intellectual property, references to the creation of an asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (6) In this section—
- <sup>F56</sup> ...
- “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice,
- “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
- (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).
- [<sup>F57</sup>(7) If—
- (a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,
- references in subsection (4) to the issuing company include the old company.]

#### Textual Amendments

- F55** S. 195(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(a\), 13](#)
- F56** Words in s. 195(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(b\), 13](#), [Sch. 27 Pt. 2\(16\)](#)
- F57** S. 195(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(7\)\(c\), 13](#)

## 196 Excluded activities: property development

- (1) This section supplements section 192(1)(g).
- (2) “Property development” means the development of land—
- (a) by a company which has, or at any time has had, an interest in the land, and
- (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to subsection (4)—
- (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
- (b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.
- (4) References in this section to an interest in land do not include—

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- (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
- (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

#### **[<sup>F58</sup>196A Excluded activities: shipbuilding**

In section 192(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

##### **Textual Amendments**

**F58** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### **196B Excluded activities: producing coal**

- (1) This section supplements section 192(1)(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation ([EC](#)) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

##### **Textual Amendments**

**F58** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### **196C Excluded activities: producing steel**

In section 192(1)(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

##### **Textual Amendments**

**F58** Ss. 196A-196C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 6, 10](#) (with [Sch. 11 para. 11](#))

#### **197 Excluded activities: hotels and comparable establishments**

- (1) This section supplements section 192(1)(j).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).

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- (3) The activities of a person are not to be taken to fall within section 192(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

## **198 Excluded activities: nursing homes and residential care homes**

- (1) This section supplements section 192(1)(k).
- (2) “Nursing home” means any establishment which exists wholly or mainly for the provision of nursing care—
- (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth.
- (3) “Residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care because of—
- (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illnesses, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within section 192(1)(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

## **199 Excluded activities: provision of services or facilities for another business**

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
- (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (k) of section 192(1), and
  - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
- (a) A controls the company,
  - (b) the company is a close company and A or an associate of A is a director of the company and is either—
    - (i) the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half the business could, in accordance with section 344(2) of ICTA (persons to whom company's trade may be treated as belonging), be regarded

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as belonging to A for the purposes of section 343 of that Act (company reconstructions without a change of ownership).

- (4) In any other case, a person has a controlling interest in a business if the person is entitled to at least half the assets used for, or of the income arising from, the business.
- (5) For the purposes of this section—
  - (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.

### *Supplementary*

## **200 Power to amend by Treasury order**

The Treasury may by order make such amendments of sections 181, 182, 184 to 189 and 192 to 199 as they consider appropriate.

## **CHAPTER 5**

### ATTRIBUTION OF AND CLAIMS FOR EIS RELIEF

#### *Attribution*

## **201 Attribution of EIS relief to shares**

- (1) References in this Part, in relation to any individual, to the EIS relief attributable to any shares or issue of shares are to be read as references to any reduction made in the individual's liability to income tax that is attributed to those shares or that issue in accordance with this section.

This is subject to the provisions of Chapters 6 and 7 providing for the withdrawal or reduction of EIS relief.

- (2) If an individual's liability to income tax is reduced in any tax year, then—
  - (a) if the reduction is obtained because of one issue of shares, the amount of the reduction is attributed to that issue, and
  - (b) if the reduction is obtained because of two or more issues of shares, the amount of the reduction—
    - (i) is apportioned between those issues in the same proportions as the amounts claimed by the individual in respect of each issue, and
    - (ii) is attributed to those issues accordingly.
- (3) If under this section an amount of any reduction of income tax is attributed to an issue of shares (“the original issue”) to an individual, a proportionate part of that amount is attributed to each share in respect of which the claim was made.
- (4) If corresponding bonus shares are issued to the individual in respect of any shares (“the original shares”) to which EIS relief is attributed—



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- (a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued is attributed to each of the shares in the holding comprising the original shares and the bonus shares, and
  - (b) after the issue of the bonus shares, this Part applies as if the original issue had included those shares.
- (5) In subsection (4) “corresponding bonus shares” means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.
- (6) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).
- (7) If, at a time when EIS relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under Chapters 6 and 7—
  - (a) if it falls to be withdrawn, the relief attributable to each of the shares in question is reduced to nil, and
  - (b) if it falls to be reduced by any amount, the relief attributable to each of the shares in question is reduced by a proportionate part of that amount.

#### *Claims: general*

### **202 Time for making claims for EIS relief**

- (1) A claim for EIS relief in respect of shares issued by a company in any tax year may be made—
  - (a) not earlier than the time the requirement in section 176(2) or (3) (trade etc must have been carried on for 4 months) is first met, and
  - (b) not later than the fifth anniversary of the normal self-assessment filing date for the tax year.
- (2) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, this section has effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

### **203 Entitlement to claim**

- (1) The investor is entitled to make a claim for EIS relief in respect of the amount subscribed by the investor for the relevant shares if the investor has received from the issuing company a compliance certificate in respect of those shares.
- (2) For the purposes of PAYE regulations no regard is to be had to EIS relief unless a claim for it has been duly made.
- (3) No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that the investor is eligible for EIS relief unless a claim for the relief has been duly made by the investor.

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### *Claims: supporting documents*

## **204 Compliance certificates**

- (1) A “compliance certificate” is a certificate which—
  - (a) is issued by the issuing company in respect of the relevant shares,
  - (b) states that, except so far as they fall to be met by or in relation to the investor, the requirements for EIS relief are for the time being met in relation to those shares, and
  - (c) is in such form as the Commissioners for Her Majesty's Revenue and Customs may direct.
- (2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide an officer of Revenue and Customs with a compliance statement in respect of the issue of shares which includes the relevant shares.
- (3) The issuing company must not issue a compliance certificate without the authority of an officer of Revenue and Customs.
- (4) If the issuing company, or a person connected with the issuing company, has given notice to an officer of Revenue and Customs under section 241 of this Act or paragraph 16(2) or (4) of Schedule 5B to TCGA 1992, a compliance certificate must not be issued unless the authority is given or renewed after the receipt of the notice.
- (5) If an officer of Revenue and Customs—
  - (a) has been requested to give or renew an authority to issue a compliance certificate, and
  - (b) has decided whether or not to do so,
 the officer must give notice of the officer's decision to the issuing company.

## **205 Compliance statements**

- (1) A “compliance statement” is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be met by or in relation to the individuals to whom shares included in that issue have been issued, the requirements for EIS relief (see section 157)—
  - (a) are for the time being met in relation to the shares to which the statement relates, and
  - (b) have been so met at all times since the shares were issued.
- (2) In determining for the purposes of subsection (1) whether the requirements for EIS relief are met at any time in relation to the issue of shares, references in this Part to “the relevant shares” are read as references to the shares included in the issue.
- (3) A compliance statement must be in such form as the Commissioners for Her Majesty's Revenue and Customs direct and must contain—
  - (a) such additional information as the Commissioners reasonably require, including in particular information relating to the persons who have requested the issue of compliance certificates,
  - (b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and
  - (c) such other declarations as the Commissioners may reasonably require.

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- (4) The issuing company may not provide an officer of Revenue and Customs with a compliance statement in respect of any shares issued by it in any tax year—
- (a) before the requirement in section 176(2) or (3) (trade etc must have been carried on for 4 months) is met, or
  - (b) later than two years after the end of that tax year or, if that requirement is first met after the end of that tax year, later than two years after the requirement is first met.

## **206 Appeal against refusal to authorise compliance certificate**

For the purpose of the provisions of TMA 1970 relating to appeals, the refusal of an officer of Revenue and Customs to authorise the issue of a compliance certificate is taken to be a decision disallowing a claim by the issuing company.

## **207 Penalties for fraudulent certificate or statement etc**

The issuing company is liable to a penalty not exceeding £3,000 if—

- (a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or
- (b) it issues a compliance certificate in contravention of section 204(3) or (4).

# **CHAPTER 6**

## **WITHDRAWAL OR REDUCTION OF EIS RELIEF**

### *Introduction*

## **208 Overview of Chapter**

This Chapter provides for EIS relief to be withdrawn or reduced under—

- (a) section 209 (disposal of shares),
- (b) section 211 (call options),
- (c) section 212 (put options),
- (d) section 213 (value received by the investor),
- (e) section 224 (repayments etc of share capital to other persons),
- (f) section 232 (acquisition of a trade or trading assets),
- (g) section 233 (acquisition of share capital), and
- (h) section 234 (relief subsequently found not to have been due).

### *Disposals*

## **209 Disposal of shares**

- (1) This section applies if—
- (a) the investor disposes of any of the relevant shares,
  - (b) the disposal takes place before period A ends, and
  - (c) EIS relief is attributable to the shares.

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- (2) If the disposal is not made by way of a bargain made at arm's length, the EIS relief attributable to the shares must be withdrawn.
- (3) If the disposal is made by way of a bargain made at arm's length, the EIS relief attributable to the shares must—
- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is—

$$R \times S$$

where—

R is the amount or value of the consideration received by the investor for the shares, and

S is the savings rate for the tax year for which the EIS relief was obtained.

- (4) This section does not apply to a disposal of shares to which an amount of EIS relief is attributable if—
- (a) the disposal was made by an individual (“A”) to another individual (“B”), and
  - (b) A and B were married to, or were civil partners of, each other and living together at the time of the disposal.
- (5) Section 246 contains rules for determining which shares of any class are treated as disposed of for the purposes of this section if the investor disposes of some but not all the shares of that class which are held by the investor.

## 210 Cases where maximum EIS relief not obtained

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to tax at the savings rate for that year on the amount on which the investor claims EIS relief in respect of the shares,
- section 209(3) has effect in relation to a disposal of any of the shares as if the amount or value referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (2) If section 158(1) and (2) applies in the case of any issue of shares as if part of the issue had been issued in a previous tax year, subsection (1) has effect as if that part

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and the remainder were separate issues of shares (and that part had been issued on a day in the previous tax year).

- (3) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsection (1) as A is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (4) Subsection (3) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief if there is a corresponding issue of bonus shares).

## **211 Call options**

- (1) This section applies if the investor grants an option which, if exercised, would bind the investor to sell any of the relevant shares.
- (2) The grant of the option is treated for the purposes of section 209 as a disposal of the shares to which the option relates.
- (3) Nothing in this section prejudices section 177 (no pre-arranged exits).

## **212 Put options**

- (1) This section applies if, at any time in period A, a person grants the investor an option which, if exercised, would bind the grantor to purchase any of the relevant shares.
- (2) Any EIS relief attributable to the shares to which the option relates must be withdrawn.
- (3) For the purposes of subsection (2) the shares to which an option relates are those which, if—
  - (a) the option were exercised immediately after the grant, and
  - (b) any shares in the issuing company acquired by the investor after the grant were disposed of immediately after being acquired,would be treated for the purposes of section 209 as disposed of in pursuance of the option.

*Value received by investor*

## **213 Value received by the investor**

- (1) This section applies if the investor receives any value from the issuing company at any time in period C relating to the relevant shares.
- (2) Any EIS relief attributable to the shares must—
  - (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
  - (b) in any other case, be withdrawn.

The formula is—

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# R × S

where—

R is the amount of the value received by the investor, and

S is the savings rate for the tax year for which the EIS relief was obtained.

(3) This section is subject to the following sections—

- (a) section 214 (value received: receipts of insignificant value),
- (b) section 218 (value received where there is more than one issue of shares),
- (c) section 219 (value received where part of share issue treated as made in previous tax year),
- (d) section 220 (cases where maximum EIS relief not obtained),
- (e) section 221 (receipts of value by and from connected persons etc), and
- (f) section 222 (receipt of replacement value).

Sections 218 to 220 are to be applied in the order in which they appear in this Part.

- (4) Value received is to be ignored, for the purposes of this section, to the extent to which EIS relief attributable to the shares has already been withdrawn or reduced on its account.
- (5) For the purposes of this section and sections 214 to 223, an individual who acquires any relevant shares on such a transfer as is mentioned in section 245 (spouses or civil partners) is treated as the investor.

## 214 Value received: receipts of insignificant value

(1) Section 213(2) does not apply if the receipt of value is a receipt of insignificant value.

This is subject to subsection (2).

(2) If—

- (a) value is received (“the relevant receipt”) by the investor from the issuing company at any time in period C relating to the relevant shares,
- (b) the investor has received from the issuing company one or more receipts of insignificant value at a time or times—
  - (i) during that period, but
  - (ii) not later than the time of the relevant receipt, and
- (c) the total amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value,

the investor is treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to that total amount.

(3) A receipt does not fall within subsection (2)(b) if it has previously formed part of a total amount falling within subsection (2)(c).

## 215 Meaning of “receipts of insignificant value”

(1) This section applies for the purposes of section 214.

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- (2) “A receipt of insignificant value” means a receipt of an amount of insignificant value, that is, an amount of value which—
- (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the relevant shares.

This is subject to subsection (3).

- (3) If at any time in the period—
- (a) beginning 12 months before the issue of the relevant shares, and
  - (b) ending at the end of the issue date,
- repayment arrangements are in existence, no amount of value received by the investor is treated as a receipt of insignificant value.
- (4) For this purpose “repayment arrangements” means arrangements which provide for the investor to receive, or to be entitled to receive, any value from the issuing company at any time in period C relating to the relevant shares.
- (5) For the purposes of this section—
- (a) the references to the investor include references to any person who at any time in period C relating to the relevant shares is an associate of the investor (whether or not that person is such an associate at the material time), and
  - (b) the reference in subsection (4) to the issuing company includes a reference to a person who at any time in period C relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

## **216 When value is received**

- (1) This section applies for the purposes of sections 213 (value received by the investor) and 218 (value received where there is more than one issue of shares).
- (2) The investor receives value from the issuing company at any time when the issuing company—
- (a) repays, redeems or repurchases any of its share capital or securities which belong to the investor or makes any payment to the investor for giving up the investor's right to any of the issuing company's share capital or any security on its cancellation or extinguishment,
  - (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which EIS relief is claimed, any debt owed to the investor other than a debt which was incurred by the company—
    - (i) on or after the date of issue of those shares, and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date,
  - (c) makes to the investor any payment for giving up on its extinguishment the investor's right to any debt, other than a debt in respect of a repayment of the kind mentioned in section 168(2)(a) or (f) (ignoring of certain expenses or remuneration) or an ordinary trade debt,
  - (d) releases or waives any liability of the investor to the issuing company or discharges or undertakes to discharge any liability of the investor to a third person,

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- (e) makes a loan or advance to the investor which has not been repaid in full before the issue of the shares in respect of which EIS relief is claimed,
- (f) provides a benefit or facility for the investor,
- (g) transfers an asset to the investor for no consideration or for consideration less than its market value or acquires an asset from the investor for consideration greater than its market value, or
- (h) makes to the investor any other payment except—
  - (i) a payment of a kind mentioned in any of the provisions of section 168(2) (ignoring of certain payments), or
  - (ii) a payment in discharge of an ordinary trade debt.
- (3) For the purposes of subsection (2)(d) the issuing company is to be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (4) For the purposes of subsection (2)(e) the following is to be treated as if it were a loan made by the issuing company to the investor—
  - (a) the amount of any debt (other than an ordinary trade debt) incurred by the investor to the issuing company, and
  - (b) the amount of any debt due from the investor to a third party which has been assigned to the issuing company.
- (5) The investor also receives value from the issuing company if—
  - (a) in respect of ordinary shares held by the investor any payment or asset is received in a winding up or in connection with a dissolution of the company, and
  - (b) the winding up or dissolution falls within section 182(4) (no tax avoidance).
- (6) The investor also receives value from the issuing company if any person who would, for the purposes of section 163, be treated as connected with the company—
  - (a) purchases any of its share capital or securities which belong to the investor, or
  - (b) makes any payment to the investor for giving up any right in relation to any of the company's share capital or securities.
- (7) If because of the investor's disposal of shares in a company any EIS relief attributable to those shares is withdrawn or reduced under section 209, the investor is not to be treated as receiving value from the company in respect of the disposal.
- (8) The investor is not to be treated as receiving value from the issuing company merely because of the payment to the investor, or any associate of the investor, of any remuneration for services rendered to that company as a director if the remuneration is reasonable remuneration.
- (9) Section 167(3) (director also an employee) applies for the purposes of subsection (8) as it applies for the purposes of section 167, and the reference in that subsection to the payment of remuneration includes the provision of any benefit or facility.
- (10) In this section “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
  - (a) is for not more than 6 months, and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.



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## **217 The amount of value received**

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of sections 213 and 218 is given by the corresponding entry in column 2 of the table.

<i><b>Provision</b></i>	<i><b>The amount of value received</b></i>
Section 216(2)(a), (b) or (c)	The amount received by the investor or, if greater, the market value of the shares, securities or debt
Section 216(2)(d)	The amount of the liability
Section 216(2)(e)	The amount of the loan or advance, less the amount of any repayment made before the issue of the relevant shares
Section 216(2)(f)	The cost to the issuing company of providing the benefit or facility, less any consideration given for it by the investor
Section 216(2)(g)	The difference between the market value of the asset and the consideration (if any) given for it
Section 216(2)(h)	The amount of the payment
Section 216(5)	The amount of the payment or the market value of the asset
Section 216(6)	The amount received by the investor or, if greater, the market value of the shares or securities

## **218 Value received where there is more than one issue of shares**

- (1) This section applies if—
  - (a) two or more issues of shares in the issuing company have been made to the investor which include shares in respect of which the investor obtains EIS relief, and
  - (b) value is received by the investor at any time in the applicable periods for two or more of those issues.
- (2) Section 213(2) has effect in relation to the shares included in each of the issues referred to in subsection (1)(b) as if the amount of value referred to as “R” were reduced by multiplying it by the fraction—

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$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains EIS relief in respect of the shares included in the issue in question, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

- (3) For the purposes of subsection (1) “the applicable period” for an issue of shares is period C in relation to those shares.

## **219 Value received where part of share issue treated as made in previous tax year**

- (1) This section applies if—

- (a) section 213(2) applies to an issue of shares, and
- (b) section 158(1) and (2) (form and amount of EIS relief) applies in the case of that issue as if part of the issue had been issued in a previous tax year.

- (2) This subsection explains how the calculation under section 213(2) is to be made.

### *Step 1*

Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the investor obtains EIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

### *Step 2*

In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues of shares in those tax years.

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In calculating amounts X1 and X2, apply section 220 if appropriate but do not apply section 218.

*Step 3*

Add amounts X1 and X2 together.

The result is the required amount.

## **220 Cases where maximum EIS relief not obtained**

- (1) If the investor's liability to income tax is reduced for any tax year in respect of any issue of shares and—
- (a) the amount of the reduction (“A”), is less than
  - (b) the amount (“B”) which is equal to income tax at the savings rate for that year on the amount on which the investor claims EIS relief in respect of the shares,
- section 213(2) has effect in relation to any value received as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (2) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsection (1) as “A” is to be treated for the purposes of that subsection as the amount that it would have been without that reduction.
- (3) Subsection (2) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief where there is a corresponding issue of bonus shares).

## **221 Receipts of value by and from connected persons etc**

In sections 213, 214 and 216 to 218—

- (a) any reference to a payment or transfer to the investor includes a reference to a payment or transfer made to the investor indirectly or to the investor's order or for the investor's benefit,
- (b) any reference to the investor includes a reference to an associate of the investor, and
- (c) any reference to the issuing company includes a reference to a person who at any time in period A relating to the relevant shares is connected with that company (whether or not that person is so connected at the material time).

## **222 Receipt of replacement value**

- (1) If—

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- (a) any EIS relief attributable to the relevant shares would, in the absence of this section, be reduced or withdrawn under section 213 because of a receipt of value within section 216(2) or (6) (“the original value”),
  - (b) the original supplier receives value (“the replacement value”) from the original recipient and the receipt is a qualifying receipt, and
  - (c) the amount of the replacement value is at least the amount of the original value,
- section 213 does not, because of the receipt of the original value, have effect to reduce or withdraw the EIS relief.

This is subject to section 223(1) and (2).

- (2) For the purposes of this section—

“the original recipient” means the person who receives the original value,

“the original supplier” means the person from whom that value was received.

- (3) If the amount of the original value is, by virtue of section 218, treated as reduced for the purposes of section 213(2) as it applies in relation to the relevant shares in question, the reference in subsection (1)(c) to the amount of the original value is to be read as a reference to the amount of that value ignoring the reduction.

- (4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) if it arises—

- (a) because of the original recipient doing one or more of the following—
  - (i) making a payment to the original supplier, other than a payment within paragraph (c) or a payment to which subsection (5) applies,
  - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset,
  - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset,
- (b) if the receipt of the original value was within section 216(2)(d), because of an event the effect of which is to reverse the event which constituted the receipt of the original value, or
- (c) if the receipt of the original value was within section 216(6), because of the original recipient repurchasing the share capital or securities in question, or (as the case may be) re-acquiring the right in question, for a consideration the amount or value of which is at least the amount of the original value.

- (5) This subsection applies to—

- (a) any payment for any goods, services or facilities, provided (whether in the course of trade or otherwise) by—
  - (i) the original supplier, or
  - (ii) any other person who, at any time in period C relating to the relevant shares, is an associate of, or is connected with, that supplier (whether or not the other person is such an associate, or is so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities,

- (b) any payment of any interest which represents no more than a reasonable commercial return on any money lent to—

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- (i) the original recipient, or
    - (ii) any person who, at any time in period C relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),
  - (c) any payment for the acquisition of an asset which does not exceed its market value,
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in period C relating to the relevant shares, is an associate of that recipient (whether or not the person is such an associate at the material time),of an amount not exceeding a reasonable and commercial rent for the property,
  - (e) any payment in discharge of an ordinary trade debt, and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii).
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4), the sum of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,
  - (b) in a case within subsection (4)(b), the same as the amount of the original value, and
  - (c) in a case within subsection (4)(c), the amount or value of the consideration received by the original supplier.

Section 217 applies for the purpose of determining the amount of the original value.

- (7) In this section—
- (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to the person indirectly or to the person's order or for the person's benefit, and
  - (b) “ordinary trade debt” has the meaning given by section 216(10).

## **223 Section 222: supplementary**

- (1) The receipt of the replacement value by the original supplier is ignored for the purposes of section 222(1) to the extent to which it has previously been set (under that section) against a receipt of value to prevent any reduction or withdrawal of EIS relief under section 213.
- (2) The receipt of the replacement value by the original supplier (“the event”) is ignored for the purposes of section 222 if—
  - (a) the event occurs before period C relating to the relevant shares,
  - (b) if the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
  - (c) if an appeal has been brought by the investor against an assessment to withdraw or reduce any EIS relief attributable to the relevant shares because

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of the receipt of the original value, the event occurs more than 60 days after the day on which the amount of relief which falls to be withdrawn has been finally determined.

But nothing in section 222 or this section requires the replacement value to be received after the original value.

(3) This subsection applies if—

- (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of section 222(1), and
- (b) in consequence of the receipt any receipts of value are ignored for the purposes of section 213 as that section applies in relation to the shares in question or any other shares subscribed for by the investor, and
- (c) the event which gives rise to the receipt is (or includes) a subscription for shares by—
  - (i) the investor, or
  - (ii) any person who at any time in period C relating to the relevant shares is an associate of the investor (whether or not the person is such an associate at the material time).

(4) If either of the following applies—

- (a) subsection (3), and
- (b) paragraph 13C(3) of Schedule 5B to TCGA 1992 (which makes corresponding provision in relation to relief under that Schedule in respect of re-investment under EIS),

the person who subscribes for the shares is not to be eligible for any EIS relief in relation to those shares or any other shares in the same issue.

(5) In this section “the original recipient”, “the original supplier” and “replacement value” have the same meaning as in section 222.

### *Repayments etc of share capital to other persons*

## **224 Repayments etc of share capital to other persons**

(1) This section applies if any EIS relief is attributable to shares held by an individual and, at any time in period C, the issuing company or any subsidiary—

- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than—
  - (i) the individual, or
  - (ii) a person who falls within subsection (4), or
- (b) makes any payment to any such member for giving up the member's right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(2) The EIS relief must—

- (a) if it is greater than the amount given by the formula set out below, be reduced by that amount, and
- (b) in any other case, be withdrawn.

The formula is—

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$R \times S$

where—

R is the amount received by the member, and

S is the savings rate for the tax year for which the EIS relief was obtained.

(3) This section is subject to the following sections—

- (a) section 225 (insignificant repayments ignored for the purposes of this section),
- (b) section 226 (amount of repayments etc where there is more than one issue of shares),
- (c) section 227 (single issue affecting more than one individual),
- (d) section 228 (single issue treated as made partly in previous tax year),
- (e) section 229 (maximum relief not obtained for share issue),
- (f) section 230 (repayment of authorised minimum within 12 months), and
- (g) section 231 (restriction on withdrawal of relief).

Sections 226 to 229 are to be applied in the order in which they appear in this Part.

(4) A person falls within this subsection if the repayment—

- (a) causes any EIS relief attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—
  - (i) section 209 (disposal of shares), or
  - (ii) section 216(2)(a) (receipt of value by virtue of repayment of share capital etc),
- (b) causes any investment relief under Schedule 15 to FA 2000 (the corporate venturing scheme) attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—
  - (i) paragraph 46 of that Schedule (disposal of shares), or
  - (ii) paragraph 49(1)(a) of that Schedule (receipt of value by virtue of repayment of share capital etc), or
- (c) gives rise to a qualifying chargeable event within the meaning of paragraph 14(4) of Schedule 5B to TCGA 1992 (EIS: deferral relief) in respect of that person's shares in the issuing company.

(5) A repayment is treated as having the effect mentioned in subsection (4)(a), (b) or (c) if it would have that effect were it not a receipt of insignificant value for the purposes of whichever of the following is applicable—

- (a) section 213,
- (b) paragraph 47 of Schedule 15 to FA 2000, and
- (c) paragraph 13 of Schedule 5B to TCGA 1992.

(6) A repayment is to be ignored, for the purposes of this section, to the extent to which EIS relief attributable to any shares has already been withdrawn or reduced on its account.

(7) In this section and sections 225 to 231—

- (a) “repayment” means a repayment, redemption, repurchase or payment mentioned in subsection (1)(a) or (b), and

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- (b) references to a subsidiary of a company are references to a company which, at any time in period A relating to the shares in question, is a 51% subsidiary of the company, whether or not it is such a subsidiary at the time of the repayment.

## **225 Insignificant repayments ignored for purposes of section 224**

- (1) A repayment is ignored for the purposes of section 224 (repayments etc of share capital to other persons) if both—
  - (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
  - (b) the amount received by the member in question,
 are insignificant in relation to the market value of the remaining issued share capital of the issuing company (or, as the case may be, the subsidiary) immediately after the event occurs.

This is subject to subsection (3).

- (2) For the purposes of subsection (1) it is assumed that the target shares are cancelled at the time the repayment is made.
- (3) Subsection (1) does not apply if repayment arrangements are in existence at any time in the period—
  - (a) beginning 12 months before the issue of the relevant shares, and
  - (b) ending at the end of the issue date.
- (4) For this purpose “repayment arrangements” means arrangements which provide—
  - (a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or
  - (b) for anyone to be entitled to such a repayment,
 at any time in period C relating to the relevant shares.

## **226 Amount of repayments etc where there is more than one issue of shares**

- (1) This section applies if, in relation to the same repayment, section 224(2) applies to EIS relief attributable to two or more issues of shares.
- (2) Section 224(2) has effect in relation to the shares included in each of those issues as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—



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A is the amount on which EIS relief was obtained by the individuals in respect of shares which are included in the issue and to which EIS relief is or, but for section 224(2)(b), would be attributable, and

B is the sum of that amount and the corresponding amount or amounts in respect of the other issue or issues.

## **227 Single issue affecting more than one individual**

- (1) This section applies if, in relation to the same repayment, section 224(2) applies to EIS relief attributable to shares held by two or more individuals.
- (2) Section 224(2) has effect in relation to each individual as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount on which the individual obtains EIS relief in respect of the shares to which EIS relief is or, but for section 224(2)(b), would be attributable, and

B is the sum of that amount and the corresponding amount or amounts on which the other individual or individuals obtain EIS relief in respect of such shares.

## **228 Single issue treated as made partly in previous tax year**

- (1) This section applies if—
  - (a) section 224(2) applies to EIS relief attributable to shares held by an individual, and
  - (b) part of the issue of shares has been treated as issued to the individual in a previous tax year for the purposes of section 158(1) and (2) (form and amount of EIS relief).
- (2) This subsection explains how the calculation under section 224(2) is to be made.

*Step 1*

Apportion the amount referred to as “R” between the tax year in which the shares were issued and the previous tax year by multiplying that amount by the fraction—

$$\frac{A}{B}$$

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where—

A is the amount on which the individual obtains EIS relief in respect of the shares treated as issued in the tax year in question, and

B is the sum of that amount and the corresponding amount in respect of the shares treated as issued in the other tax year.

#### *Step 2*

In relation to each of the amounts (“R1” and “R2”) so apportioned to the two tax years, calculate the amounts (“X1” and “X2”) that would be given by the formula if there were separate issues of shares in those tax years.

In calculating amounts X1 and X2, apply section 229 if appropriate but do not apply section 226 or 227.

#### *Step 3*

Add amounts X1 and X2 together.

The result is the required amount.

### **229 Maximum relief not obtained for share issue**

- (1) This section applies if section 224(2) applies to EIS relief attributable to shares held by an individual and—
  - (a) the amount of the reduction (“A”) in the individual's liability to income tax for any tax year in respect of the shares, is less than
  - (b) the amount (“B”) which is equal to income tax at the savings rate for that year on the amount on which the individual claims EIS relief in respect of the shares.
- (2) Section 224(2) has effect as if the amount referred to as “R” were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

- (3) If the amount of EIS relief attributable to any of the relevant shares has been reduced before the EIS relief was obtained, the amount referred to in subsections (1) and (2) as “A” is to be treated for the purposes of those subsections as the amount that it would have been without that reduction.
- (4) Subsection (3) does not apply to a reduction of EIS relief by virtue of section 201(4) (attribution of EIS relief where there is a corresponding issue of bonus shares).

### **230 Repayment of authorised minimum within 12 months**

- (1) This section applies if—

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- [<sup>F59</sup>(a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum (within the meaning of the Companies Act 2006) for the purposes of complying with section 761 of that Act (public company: requirement as to minimum share capital),]
- (b) the registrar of companies issues the company with a certificate under that section.

(2) Section 224(2) does not apply in relation to any redemption of the original shares within 12 months of the date on which they were issued.

<sup>F60</sup>(3) . . . . .

#### Textual Amendments

- F59** S. 230(1)(a) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **39(2)** (with art. 4)
- F60** S. 230(3) repealed (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 39(2), **Sch.** (with art. 4)

### 231 Restriction on withdrawal of relief under section 224

- (1) This section applies if, because of a repayment, any investment relief which is attributable under Schedule 15 to FA 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.
- (2) For the purposes of this section “the relevant amount” is the amount determined by the formula—

$$A - 5B$$

where—

A is the amount of the repayment, and

B is the total amount of investment relief withdrawn because of the repayment.

- (3) If the relevant amount does not exceed £1,000, the repayment is ignored for the purposes of section 224(1), unless repayment arrangements are in existence at any time in the period—
- (a) beginning 12 months before the issue of the shares mentioned in subsection (1), and
  - (b) ending at the end of the issue date.
- (4) For this purpose “repayment arrangements” means arrangements which provide—
- (a) for a repayment by the issuing company or any subsidiary of that company, or
  - (b) for anyone to be entitled to such a repayment,
- at any time.
- (5) Subsection (4)(a) applies in relation to a subsidiary of the issuing company whether or not it is such a subsidiary when the arrangements were made.

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- (6) If the repayment is not ignored by virtue of subsection (3), the amount received because of the repayment is treated for the purposes of section 224(2) as an amount equal to the relevant amount.
- (7) In this section—
  - (a) “investment relief” has the same meaning as in Schedule 15 to FA 2000 (corporate venturing scheme), and
  - (b) references to the withdrawal of investment relief include its reduction.

### *Miscellaneous*

## **232 Acquisition of a trade or trading assets**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if—
  - (a) at any time in period A, the company or any qualifying subsidiary—
    - (i) begins to carry on as its trade, or as part of its trade, a trade which was previously carried on at any time in that period otherwise than by the company or any qualifying subsidiary, or
    - (ii) acquires the whole, or the greater part, of the assets used for the purposes of a trade previously so carried on, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) or (3) applies.
- (2) This subsection applies to any person or group of persons—
  - (a) to whom an interest amounting in total to more than a half share in the trade (as previously carried on) belonged at any time in period A, and
  - (b) who is or are a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged.
- (3) This subsection applies to any person or group of persons who—
  - (a) control or, at any time in period A, have controlled the company, and
  - (b) is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade.
- (4) For the purposes of subsection (2)—
  - (a) the person to whom a trade belongs and, if a trade belongs to two or more persons, their respective shares in that trade are determined in accordance with section 344(1)(a) and (b), (2) and (3) of ICTA, and
  - (b) any interest, rights or powers of a person who is an associate of another person are treated as those of that other person.
- (5) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—
  - (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2) (reasonable remuneration for services),
 is to be withdrawn, the reference in subsection (3)(b), and (so far as relating to that provision) the reference in subsection (1)(a)(i), to any time in period A are to be read as references to any time before the end of period A.

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- (6) Section 167(3) (director also an employee) applies for the purposes of subsection (5) as it applies for the purposes of section 168, and in subsection (5) “remuneration” includes any benefit or facility.
- (7) In this section “trade” includes any business or profession, and references to a trade previously carried on include references to part of such a trade.

### **233 Acquisition of share capital**

- (1) Any EIS relief attributable to any shares in a company held by an individual is withdrawn if —
  - (a) the company comes to acquire all of the issued share capital of another company at any time in period A, and
  - (b) the individual is a person, or one of a group of persons, to whom subsection (2) applies.
- (2) This subsection applies to any person or group of persons who—
  - (a) control or have, at any time in period A, controlled the company, and
  - (b) is or are a person or group of persons who, at any such time, controlled the other company.
- (3) In determining whether any EIS relief attributable to any shares in the issuing company held by an individual who—
  - (a) is a director of, or of a company which is a partner of, the issuing company or any qualifying subsidiary, and
  - (b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 169(2),is to be withdrawn, the reference in subsection (2)(b) to any time in period A is to be read as a reference to any time before the end of period A.
- (4) Section 167(3) applies for the purposes of subsection (3) as it applies for the purposes of section 168, and in subsection (3) “remuneration” includes any benefit or facility.

### **234 Relief subsequently found not to have been due**

- (1) Any EIS relief obtained by the investor which is subsequently found not to have been due must be withdrawn.
- (2) EIS relief obtained by the investor in respect of the relevant shares may not be withdrawn on the ground—
  - (a) that the requirements of sections 174 and 175 (the purpose of the issue and use of money raised requirements) are not met in respect of the shares, or
  - (b) that the issuing company is not a qualifying company in relation to the shares (see Chapter 4),unless the requirements of subsection (3) are met.
- (3) The requirements of this subsection are met if either—
  - (a) the issuing company has given notice under section 241, or paragraph 16(2) or (4) of Schedule 5B to TCGA 1992, (information to be provided by issuing company etc) in relation to the relevant issue of shares, or
  - (b) an officer of Revenue and Customs has given notice to that company stating the officer's opinion that, because of the ground in question, the whole or any

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part of the EIS relief obtained by any individual in respect of shares included in the relevant issue of shares was not due.

- (4) In this section “the relevant issue of shares” means the issue of shares in the issuing company which includes the relevant shares.

## CHAPTER 7

### WITHDRAWAL OR REDUCTION OF EIS RELIEF: PROCEDURE

#### *Assessments and appeals*

#### **235 Assessments for the withdrawal or reduction of EIS relief**

If any EIS relief which has been obtained falls to be withdrawn or reduced under Chapter 6, it must be withdrawn or reduced by the making of an assessment to income tax for the tax year for which the relief was obtained.

#### **236 Appeals against section 234(3)(b) notices**

- (1) For the purposes of the provisions of TMA 1970 relating to appeals, the giving of notice by an officer of Revenue and Customs under section 234(3)(b) is taken to be a decision disallowing a claim by the issuing company.
- (2) If any issue has been determined on an appeal brought by virtue of paragraph 1A(6) of Schedule 5B to TCGA 1992 (appeal against notice that shares never have been, or have ceased to be, eligible shares), the determination is conclusive for the purposes of any appeal brought by virtue of subsection (1) on which that issue arises.

#### **237 Time limits for assessments**

- (1) An officer of Revenue and Customs may not—
  - (a) make an assessment for withdrawing or reducing the EIS relief attributable to any of the relevant shares, or
  - (b) give a notice under section 234(3)(b),
 more than 6 years after the end of the relevant tax year.
- (2) In subsection (1) “the relevant tax year” means—
  - (a) the tax year in which the time mentioned in section 175(3) (the use of money raised requirement) falls, or
  - (b) the tax year in which the event which causes the EIS relief to be withdrawn or reduced occurs,
 whichever is the later.
- (3) Subsection (1) is without prejudice to section 36 of TMA 1970 (fraudulent or negligent conduct).

#### **238 Cases where assessment not to be made**

- (1) No assessment for withdrawing or reducing EIS relief in respect of shares issued to an individual may be made because of an event occurring after the individual's death.

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- (2) Subsection (3) applies if an individual has, by a disposal or disposals to which section 209(3) applies, disposed of all shares which—
- (a) have been issued to the individual by the issuing company, and
  - (b) are shares—
    - (i) to which EIS relief is attributable, or
    - (ii) in relation to which period A has not come to an end.
- (3) No assessment for withdrawing or reducing EIS relief in respect of those shares may be made because of any subsequent event unless the event occurs at a time when the individual is connected with the company within the meaning of section 166.

### *Interest*

## 239 Date from which interest is chargeable

- (1) In its application to an assessment made by virtue of section 235 in the case of relief withdrawn or reduced by virtue of a provision listed in column 1 of the following table, section 86 of TMA 1970 (interest on overdue income tax) has effect as if the relevant date were given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>Relevant date</i>
Section 163, [F61 173A] any of sections 181 to 188 or section 224, 232 or 233	The date of the event which caused the withdrawal or reduction of EIS relief
Section 164	The date of the making of the loan (see subsection (2))
Section 209	The date of the disposal
Section 212(1)	The date of the grant of the option
Section 213	The date of the receipt of value

- (2) The reference in the second entry in the table to the making of a loan is to be read in accordance with section 164(3).

### Textual Amendments

**F61** Word in s. 239(1) inserted (19.7.2007) by Finance Act 2007 (c. 11), Sch. 16 para. 5(4) (with Sch. 16 para. 5(5)(6))

### *Information*

## 240 Information to be provided by the investor

- (1) This section applies if the investor has obtained EIS relief in respect of the relevant shares, and an event occurs as a result of which—
- (a) the investor is not a qualifying investor in relation to the shares,
  - (b) the EIS relief falls to be withdrawn or reduced by virtue of section 164 (no linked loans requirement),

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- (c) the EIS relief falls to be withdrawn or reduced under—
    - (i) section 209 (disposal of shares),
    - (ii) section 211 (call options), or
    - (iii) section 212 (put options), or
  - (d) the EIS relief falls to be withdrawn or reduced under section 213 (receipt of value by the investor), or would fall to be so withdrawn or reduced but for section 222 (receipt of replacement value).
- (2) The investor must within 60 days of coming to know of the event give a notice to an officer of Revenue and Customs containing particulars of the event.
- (3) If the investor—
- (a) is required under this section to give notice of a receipt of value which is within section 213, or would be within that section but for section 222, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,
- the notice must include particulars of that receipt of replacement value (or expected receipt).
- (4) In subsection (3) “qualifying receipt” and “replacement value” are to be read in accordance with section 222.

## 241 Information to be provided by the issuing company etc

- (1) This section applies if the issuing company has provided an officer of Revenue and Customs with a compliance statement in respect of an issue of shares and an event occurs as a result of which—
- (a) the requirement of section 175 (the use of money raised) is not met in respect of any of the shares included in the issue, or would not be met if EIS relief had been obtained in respect of the shares in question,
  - (b) any provision of Chapter 4 has effect to prevent the issuing company being a qualifying company in relation to any of the shares included in the issue, or would have such an effect if EIS relief had been obtained in respect of the shares in question, or
  - (c) any provision of Chapter 6 which is listed in subsection (2) has effect to cause any EIS relief attributable to any of the shares included in the issue to be withdrawn or reduced, or—
    - (i) would have such an effect if EIS relief had been obtained in respect of the shares in question, or
    - (ii) in the case of section 213, would have such an effect but for section 222 (receipt of replacement value).
- (2) The provisions are—
- (a) section 213 (value received by the investor),
  - (b) section 224 (repayments etc of share capital to other persons),
  - (c) section 232 (acquisition of a trade or trading assets), and
  - (d) section 233 (acquisition of share capital).
- (3) If this section applies—
- (a) the issuing company, and



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- (b) any person connected with the issuing company who has knowledge of the matters mentioned in subsection (1),  
must give a notice to an officer of Revenue and Customs containing particulars of the event.
- (4) Any notice required to be given by the issuing company under subsection (3)(a) must be given—
  - (a) within 60 days of the event, or
  - (b) if the event is a receipt of value within section 216(2) from a person connected with the company (see section 221), within 60 days of the company coming to know of the event.
- (5) Any notice required to be given by a person under subsection (3)(b) must be given within 60 days of the person coming to know of the event.
- (6) If a person—
  - (a) is required under this section to give notice of a receipt of value which is within section 213, or would be within that section but for section 222, and
  - (b) has knowledge of any replacement value received (or expected to be received) because of a qualifying receipt,the notice must include particulars of that receipt of replacement value (or expected receipt).
- (7) In subsection (6) “qualifying receipt” and “replacement value” are to be read in accordance with section 222.

## **242 Power to require information where section 240 or 241 applies or could have applied**

- (1) This section applies if an officer of Revenue and Customs has reason to believe that a person—
  - (a) has not given a notice which the person is required to give under section 240 or 241 in respect of any event,
  - (b) has given or received value within the meaning of section 216(2) or (6) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice, or
  - (c) has made or received any repayment within the meaning given by section 224(7) which, but for the fact that it falls to be ignored for the purposes of section 224 by virtue of section 225(1), would have triggered a requirement to give a notice under section 241.
- (2) The officer may by notice require the person concerned to supply the officer, within such time as the officer may specify in the notice, with such information relating to the event as the officer may reasonably require for the purposes of this Part.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) In subsection (1)(b) the reference to an amount of insignificant value is construed in accordance with section 215(2).

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## **243 Power to require information in other cases**

- (1) Subsection (2) applies if EIS relief is claimed in respect of shares in a company, and an officer of Revenue and Customs has reason to believe that it may not be due because of any such arrangement or scheme as is mentioned in—

- (a) section 165 or 182(2) or (4) (no tax avoidance),
- (b) section 171 (persons subscribing for shares under certain arrangements),
- (c) section 176(4) or (5), 183(6) or 191(3), (4) or (5) (winding up, administration etc),
- (d) section 177(1) (no pre-arranged exits), or
- (e) section 185(1) or (2), 190(1) or 191(2) (conditions ceasing to be met).

The reference in paragraph (c) to subsections (3), (4) and (5) of section 191 is to be read as including those subsections as applied by section 190(2).

- (2) The officer may by notice require any person concerned to supply the officer within such time as may be specified in the notice with—
- (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed, and
  - (b) such other information as the officer may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) For the purposes of subsection (2), in a case falling within a provision listed in column 1 of the following table, the person concerned is given by the corresponding entry in column 2 of the table.

<i><b>Provision</b></i>	<i><b>The person concerned</b></i>
Subsection (1)(a)	The claimant, the company and any person controlling the company
Subsection (1)(b)	The claimant
Subsection (1)(c)	The claimant, the company, any other company in question and any person controlling the company or any other company in question
Subsection (1)(d)	The claimant, the company and any person connected with the company
Subsection (1)(e)	The company and any person controlling the company

References in this subsection to the claimant include references to any person to whom the claimant appears to have made such a transfer as is mentioned in section 245 (spouses or civil partners) of any of the shares in question.

- (5) If EIS relief has been obtained in respect of shares in a company—
- (a) any person who receives from the company any payment or asset which may constitute value received (by the person or another) for the purposes of section 213, and

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(b) any person on whose behalf such a payment or asset is received, must, if so required by an officer of Revenue and Customs, state whether the payment or asset so received is received on behalf of any other person and, if so, the name and address of that other person.

(6) If EIS relief has been claimed in respect of shares in a company—

(a) any person who holds or has held shares in the company, and

(b) any person on whose behalf any such shares are or were held,

must, if so required by an officer of Revenue and Customs, state whether the shares so held are or were held on behalf of any other person and, if so, the name and address of that other person.

## **244 Obligations of secrecy**

No obligation of secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a company that EIS relief has been obtained or claimed in respect of a particular number or proportion of its shares.

# **CHAPTER 8**

## **SUPPLEMENTARY AND GENERAL**

### *Disposals of shares*

## **245 Transfers between spouses or civil partners**

(1) This section applies if—

- (a) shares to which an amount of EIS relief is attributable were issued to an individual (“A”),
- (b) A transferred the shares to another individual (“B”) during their lives,
- (c) A was married to, or was the civil partner of, B at the time of the transfer, and
- (d) section 209 (disposal of shares) does not apply to the transfer.

(2) This Part has effect, in relation to any subsequent disposal or other event, as if—

- (a) B were the individual who had subscribed for the shares,
- (b) the amount that B had subscribed for the shares were the amount that A had subscribed for them,
- (c) B's liability to income tax had been reduced in respect of the shares for the same tax year as that for which A's was so reduced,
- (d) the amount by which B's liability to income tax had been reduced in respect of the shares were the same as that by which A's liability to income tax had been so reduced, and
- (e) that amount of EIS relief had continued to be attributable to the shares despite the transfer.

(3) If the amount of EIS relief attributable to the shares had been reduced before the relief was obtained by A—

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- (a) this Part has effect, in relation to any subsequent disposal or other event, as if the amount of EIS relief attributable to the shares transferred to B had been correspondingly reduced before the relief was obtained by B, and
  - (b) sections 210(3), 220(2) and 229(3) apply in relation to B as they would have applied in relation to A.
- (4) If, because of any such disposal or other event, an assessment for reducing or withdrawing EIS relief is to be made, the assessment is to be made on B.

## 246 Identification of shares on a disposal

- (1) The rules in subsections (2) and (3) are for determining which shares of any class are treated as disposed of for the purposes of—
  - (a) section 209 (disposal of shares), or
  - (b) section 245 (spouses or civil partners),
 if the investor disposes of some but not all of the shares of that class which the investor holds in a company.
- (2) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (3) Shares acquired on the same day are treated as disposed of in the following order—
  - (a) first any to which neither EIS relief nor deferral relief is attributable,
  - (b) next any to which deferral relief, but not EIS relief, is attributable,
  - (c) next any to which EIS relief, but not deferral relief, is attributable, and
  - (d) finally any to which both EIS relief and deferral relief are attributable.
- (4) Any shares within paragraph (c) or (d) of subsection (3) which are treated by section 201(6) as issued on an earlier day are treated as disposed of before any other shares falling within that paragraph of subsection (3).
- (5) The following—
  - (a) any shares to which EIS relief is attributable and which were transferred to an individual as mentioned in section 245, and
  - (b) any shares to which deferral relief, but not EIS relief, is attributable and which were acquired by an individual on a disposal to which section 58 of TCGA 1992 applies,
 are treated for the purposes of subsections (2) and (3) as acquired by the individual on the day on which they were issued.
- (6) In a case to which section 127 of TCGA 1992 applies (including the case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (7) In this section—
  - “deferral relief” has the same meaning as in Schedule 5B to TCGA 1992,
  - “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

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### *Acquisition of issuing company*

## **247 Continuity of EIS relief where issuing company is acquired by new company**

(1) This section applies if—

- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
- (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
- (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
- (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings,
- (e) at some time before the issue of the new shares—
  - (i) the old company issued shares which meet the requirements of section 173(2), and
  - (ii) a compliance certificate in respect of those shares was issued by that company for the purposes of subsection (1) of section 203 and in accordance with section 204, and
- (f) before the issue of the new shares the Commissioners for Her Majesty's Revenue and Customs have, on the application of the new company or the old company, notified that company that they are satisfied that the exchange of shares—
  - (i) will be effected for genuine commercial reasons, and
  - (ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).

In this subsection references to shares, except in the expressions “subscriber shares” and “shares which meet the requirements of section 173(2)”, include securities.

- (2) Subsection (2) of section 138 of TCGA 1992 (procedure for advance clearance) applies for the purposes of subsection (1)(f) as it applies for the purposes of subsection (1) of that section.
- (3) For the purposes of this Part—
  - (a) the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares, and
  - (b) any EIS relief which is attributable to any old shares is attributable instead to the new shares for which they are exchanged.
- (4) Nothing in section 185 (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.
- (5) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (6) References in sections 248 and 249 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

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## **248 Carry over of obligations etc where EIS relief attributed to new shares**

- (1) This section applies if, under section 247, any EIS relief which is attributable to any old shares becomes attributable instead to any new shares.
- (2) This Part has effect as if anything which, under—
  - (a) section 203(1) (entitlement to claim),
  - (b) section 234(3) (relief subsequently found not to be due), or
  - (c) sections 241 to 244 (information to be provided),
 has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company.
- (3) Any appeal brought by the old company against a notice under section 234(3)(b) may be prosecuted by the new company as if it had been brought by that company.

## **249 Substitution of new shares for old shares**

- (1) Subsection (2) applies if, in the case of any new shares held by an individual to which EIS relief becomes attributable under section 247, the old shares for which they were exchanged were subscribed for by and issued to the individual.
- (2) This Part<sup>F62</sup>; (except section 195(7)) has effect as if—
  - (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for by the individual,
  - (b) the new shares had been issued to the individual by the new company at the time when the old shares were issued to the individual by the old company,
  - (c) the claim for EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the individual's liability was so reduced in respect of the old shares.
- (3) Subsection (4) applies if, in the case of any new shares held by an individual to which EIS relief becomes so attributable under section 247, the old shares for which they were exchanged were transferred to the individual as mentioned in section 245.
- (4) This Part<sup>F63</sup>; (except section 195(7)) has effect in relation to any subsequent disposal or other event as if—
  - (a) the new shares had been subscribed for by the individual at the time when, and for the amount for which, the old shares were subscribed for,
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company,
  - (c) the claim for EIS relief made in respect of the old shares had been made in respect of the new shares, and
  - (d) the individual's liability to income tax had been reduced in respect of the new shares for the same tax year as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

### **Textual Amendments**

**F62** Words in s. 249(2) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(a\), 13](#)

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**F63** Words in s. 249(4) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 11\(8\)\(b\), 13](#)

### *Nominees etc*

## **250 Nominees and bare trustees**

- (1) Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.
- (2) If shares have been issued to a bare trust for two or more beneficiaries, this Part has effect (with the necessary modifications) as if—
  - (a) each beneficiary had subscribed as an individual for all of those shares, and
  - (b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.
- (3) In subsection (2) and section 251 “shares” means shares which meet the requirements of section 173(2).

## **251 Approved investment fund as nominee**

- (1) Subsection (2) applies if an individual claims EIS relief in respect of shares in a company at a time when—
  - (a) the shares have been issued to the managers of an approved fund as nominee for the individual,
  - (b) the fund has closed, that is to say, no further investments in the fund are to be accepted, and
  - (c) the amounts which the managers have, as nominee for the individual, subscribed for shares issued within [<sup>F64</sup>12] months after the closing of the fund represent at least 90% of the individual's investment in the fund.

In this section “the managers of an approved fund” means the person or persons having the management of an investment fund approved for the purposes of this section by the Commissioners for Her Majesty's Revenue and Customs.

- (2) In any case where this subsection applies, section 158 (form and amount of EIS relief) and section 201 (attribution of EIS relief to shares) have effect as if—
  - (a) any reference to the tax year or other period in which the shares are issued were a reference to the tax year or other period in which the fund closes, and
  - (b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.
- (3) Section 157(2) (minimum subscription) does not apply if the amount is subscribed as nominee for an individual by the managers of an approved fund.
- (4) If an individual claims EIS relief in respect of shares in a company which have been issued to the managers of an approved fund as nominee for the individual, section 203(1) (entitlement to claim) applies as if —
  - (a) it required the certificate referred to in that section to be issued by the company to the managers, and

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- (b) it provided that no claim for EIS relief may be made unless the person making the claim has received from the managers a certificate issued by the managers in accordance with subsection (5).
- (5) A certificate is issued in accordance with this subsection if—
  - (a) it certifies that the managers hold compliance certificates issued to them by the companies concerned, for the purposes of section 203(1), in respect of the holding of shares shown on the managers' certificate, and
  - (b) it is in such form as the Commissioners for Her Majesty's Revenue and Customs may authorise.
- (6) The managers of an approved fund may be required by a notice given to them by an officer of Revenue and Customs to deliver to the officer, within the time limited by the notice, a return of the holdings of shares shown on certificates issued by them in accordance with subsection (5) in the tax year to which the return relates.
- (7) Section 207 (penalties for fraudulent certificate or statement etc) does not apply in relation to any certificate issued by the managers of an approved fund for the purposes of subsection (4).

#### **Textual Amendments**

**F64** Word in s. 251(1)(c) substituted (with effect in accordance with Sch. 16 para. 19(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 19(1)**

### *Interpretation*

#### **252 Meaning of a company being “in administration” or “in receivership”**

- (1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.
- (2) A company is “in administration” if—
  - (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
- (3) A company is “in receivership” if there is in force in relation to it—
  - (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or
  - (b) any corresponding order under the law of a country or territory outside the United Kingdom.

#### **253 Meaning of “associate”**

- (1) In this Part “associate”, in relation to a person, means—
  - (a) any relative or partner of that person,



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- (b) the trustee or trustees of any settlement in relation to which that person, or any relative of that person (living or dead), is or was a settlor, and
- (c) if that person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—
  - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
  - (ii) if that person is a company, any other company which has an interest in those shares or obligations.

- (2) In subsection (1)(a) and (b) “relative” means spouse or civil partner, ancestor or lineal descendant.

## **254 Meaning of “disposal of shares”**

- (1) In this Part references to a disposal of shares include references to a disposal of an interest or right in or over shares.
- (2) An individual is to be treated, for the purposes of this Part, as disposing of any shares which the individual is treated by virtue of section 136 of TCGA 1992 as exchanging for other shares.

## **255 Meaning of “issue of shares”**

- (1) In this Part—
  - (a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and are issued on the same day, and
  - (b) references (however expressed) to an issue of shares in any company to an individual are to such of the shares in the company as are of the same class and are issued to the individual on the same day.
- (2) Subsection (1)(b) has effect subject to sections 201(6), 202(2), 210(2), 219(1) and 228(1).

## **256 Meaning of “the termination date”**

- (1) In this Part “the termination date”, in relation to any shares issued by a company, means—
  - (a) the third anniversary of the issue date, or
  - (b) if—
    - (i) the money raised by the issue was raised wholly or mainly for the purpose of a qualifying business activity within section 179(2) (the issuing company or a qualifying 90% subsidiary of that company carrying on or preparing to carry on a qualifying trade), and
    - (ii) neither the issuing company nor any of its qualifying 90% subsidiaries had begun to carry on the trade in question on the issue date,the third anniversary of the date on which the issuing company or any qualifying 90% subsidiary of that company begins to carry on that trade.
- (2) In determining for the purposes of subsection (1) when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, any carrying on of the trade by it before it became such a subsidiary is to be ignored.

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## 257 Minor definitions etc

(1) In this Part—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),

“director” is read in accordance with section 417(5) of ICTA,

“group” means a parent company and its qualifying subsidiaries,

“group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,

“ordinary shares” means shares forming part of a company's ordinary share capital,

“parent company” means a company that has one or more qualifying subsidiaries and “single company” means a company that does not,

“period A”, “period B” and “period C” have the meaning given by section 159, and

“research and development” has the meaning given by section 1006.

(2) Section 993 (connected persons) does not apply for the purposes of Chapter 2 (other than section 168(4)).

(3) Section 995 (control) does not apply for the purposes of the following provisions—

section 185(1)(a),

section 199(3)(a) and (b)(ii),

section 232(3),

section 233(2), and

section 243(4),

and in those provisions “control” is to be read in accordance with section 416(2) to (6) of ICTA.

(4) In this Part—

(a) references in any provision to the reduction of any EIS relief attributable to any shares include a reference—

(i) to the reduction of the relief to nil, and

(ii) if no relief has yet been obtained, to the reduction of the amount which apart from that provision would be the EIS relief, and

(b) references to the withdrawal of EIS relief in respect of any shares are—

(i) to the withdrawal of the EIS relief attributable to those shares, or

(ii) if no relief has yet been obtained, to ceasing to be eligible for EIS relief in respect of those shares.

(5) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on [F65 a recognised stock exchange].

(6) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.

(7) In this Part—

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- (a) references to EIS relief obtained by an individual in respect of any shares include references to EIS relief obtained by the individual in respect of those shares at any time after the individual has disposed of them, and
  - (b) references to the withdrawal or reduction of EIS relief obtained by an individual in respect of any shares include references to the withdrawal or reduction of EIS relief obtained by the individual in respect of those shares at any such time.
- (8) In the case of requirements that cannot be met until a future date, references in this Part to requirements being met for the time being are to nothing having occurred to prevent their being met.

#### Textual Amendments

**F65** Words in s. 257(5) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(5\)](#)

## PART 6

### VENTURE CAPITAL TRUSTS

## CHAPTER 1

### INTRODUCTION

#### 258 Overview of Part

In this Part—

- (a) Chapter 2 provides for VCT income tax relief (“VCT relief”), that is, entitlement to tax reductions in respect of amounts subscribed by individuals for shares issued to them by venture capital trusts,
- (b) Chapter 3 provides for VCT approvals,
- (c) Chapter 4 makes provision as to the meaning of “qualifying holding” for the purposes of Chapter 3,
- (d) Chapter 5 confers power for regulations to make provision in relation to the winding up and merger of venture capital trusts, and
- (e) Chapter 6 makes supplementary and general provision.

#### 259 Venture capital trusts and VCT approvals

- (1) In this Part “venture capital trust” means a company which—
  - (a) is not a close company, and
  - (b) is for the time being approved for the purposes of this Part by the Commissioners for Her Majesty's Revenue and Customs (see Chapter 3),and “VCT” means a venture capital trust.
- (2) In this Part “VCT approval” means an approval of a company for the purposes of this Part.

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## **260 Other tax reliefs relating to VCTs**

- (1) Chapter 5 of Part 6 of ITTOIA 2005 (venture capital trust dividends) provides that, if conditions are met, no liability to income tax arises in respect of dividends paid in respect of shares in a VCT.
- (2) Section 100 of TCGA 1992 (exemption for venture capital trusts etc) provides that gains accruing to a VCT are not to be chargeable gains.
- (3) Section 151A of TCGA 1992 (venture capital trusts: reliefs) provides that a gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—
  - (a) was a VCT at the time when the individual acquired the shares, and
  - (b) is still a VCT at the time of the disposal,
 is not to be a chargeable gain or, as the case may be, an allowable loss.
- (4) Schedule 5C to TCGA 1992 (venture capital trusts: deferred charge on re-investment, but only in relation to shares issued before 6 April 2004) provides that, if conditions are met, an individual's unused qualifying expenditure on shares in a VCT may be set against what would otherwise be chargeable gains.

## **CHAPTER 2**

### **VCT RELIEF**

#### *Entitlement to relief*

## **261 Eligibility for relief**

- (1) An individual (“A”) is eligible for VCT relief for a tax year if—
  - (a) a VCT issues eligible shares to A in that year,
  - (b) the VCT issues the shares for raising money, and
  - (c) A subscribes for the shares on A's own behalf.
- (2) The amount in respect of which A is eligible for VCT relief for the tax year by reference to any shares is the amount subscribed by A for the shares.
- (3) A is eligible for VCT relief by reference to any shares only if—
  - (a) the shares are both subscribed for and issued—
    - (i) for genuine commercial reasons, and
    - (ii) not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (b) A is at least 18 years old when the shares are issued.
- (4) A is not eligible for VCT relief by reference to any shares if they are treated as issued to A by virtue of section 195(8) of FA 2003 (tax treatment of disposal by company of its own shares).

See section 271(4) for provision requiring the giving of notices about the effect of this subsection.

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## **262 Entitlement to claim relief**

- (1) An individual (“A”) who is eligible for VCT relief by reference to shares issued in a tax year is entitled to claim VCT relief for that year.
- (2) A is entitled to claim VCT relief in respect of the amount on which A is eligible for VCT relief by reference to all or some of the shares.

This is subject to subsection (3).

- (3) A is not entitled to claim VCT relief for any tax year on an amount of more than £200,000.

## **263 Form and amount of relief**

- (1) An individual who—
  - (a) is entitled to claim VCT relief for a tax year, and
  - (b) claims such relief for the year on any amount,is entitled to a tax reduction for the year.
- (2) The tax reduction is equal to 30% of the amount in respect of which the claim is made.
- (3) The tax reduction is given effect at Step 6 of the calculation in section 23.

## **264 No entitlement to relief if there is a linked loan**

- (1) An individual is not entitled to VCT relief by reference to any shares (“the relevant shares”) if a linked loan is made by any person, at any time in the relevant period, to the individual or an associate of the individual.
- (2) References in this section to the making by any person of a loan to an individual or any associate of the individual include references—
  - (a) to the giving by that person of any credit to the individual or any associate of the individual, and
  - (b) to the assignment to that person of any debt due from the individual or any associate of the individual.
- (3) In this section—

“linked loan” means a loan which—

  - (a) would not have been made, or
  - (b) would not have been made on the same terms,

if the individual had not subscribed for the relevant shares or had not been proposing to do so,

“the relevant period”, in relation to VCT relief in respect of any shares in a company which is a VCT, means the period—

  - (a) beginning with—
    - (i) the incorporation of the company, or
    - (ii) if later, the date two years before the issue of the shares, and
  - (b) ending immediately before the fifth anniversary of that issue.

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## **265 No entitlement to relief which would have been lost if it had already been obtained**

An individual is not entitled to VCT relief by reference to any shares if circumstances have arisen which would have resulted in the withdrawal or reduction of the relief, if that relief had already been obtained.

### *Loss of relief*

## **266 Loss of relief if shares disposed of within 5 years**

- (1) This section applies, subject to section 267 (spouses or civil partners), if an individual—
  - (a) obtains VCT relief in respect of eligible shares in a VCT, and
  - (b) makes a disposal of those shares within 5 years of their issue to the individual.
- (2) In the case of a disposal that is made otherwise than by way of a bargain made at arm's length, any VCT relief obtained by reference to the shares which are disposed of is to be withdrawn.
- (3) In the case of a disposal that is made by way of a bargain made at arm's length, any VCT relief obtained by reference to the shares disposed of must—
  - (a) if it is greater than A, be reduced by A, and
  - (b) in any other case, be withdrawn.
- (4) A is 30% of the amount or value of the consideration which the individual receives for the shares.
- (5) The rules in subsections (6) and (7) are for determining which eligible shares of any class are treated as disposed of for the purposes of—
  - (a) this section, and
  - (b) section 267,
 if a person disposes of some but not all of the eligible shares of that class which the person holds in a company.
- (6) Shares acquired on an earlier day are treated as disposed of before shares acquired on a later day.
- (7) Shares acquired on the same day are treated as disposed of in the following order—
  - (a) shares by reference to which VCT relief has not been obtained, and
  - (b) shares by reference to which VCT relief has been obtained.

## **267 Transfers of shares between spouses or civil partners**

- (1) Section 266 does not apply in the case of any disposal of shares made by an individual to the individual's spouse or civil partner, if it is made at a time when they are living together.
- (2) Subsection (3) applies if any eligible shares which—
  - (a) have been issued to any individual (“the transferor”), and
  - (b) are shares by reference to which any VCT relief has been obtained,

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are transferred to the transferor's spouse or civil partner ("the transferee") by a disposal such as is mentioned in subsection (1).

- (3) If this subsection applies, section 266 and subsection (2) have effect, in relation to any subsequent disposal or other event, as if—
- (a) the transferee were the person who had subscribed for the shares,
  - (b) the shares had been issued to the transferee at the time when they were issued to the transferor,
  - (c) there had been, in relation to the transferred shares, such a reduction by way of VCT relief in the transferee's liability to income tax as is equal to the actual reduction in respect of those shares of the transferor's liability, and
  - (d) that deemed reduction were (despite the transfer) to be treated for the purposes of section 266 as an amount of VCT relief obtained by reference to the shares transferred.
- (4) Any assessment for withdrawing or reducing VCT relief because of a disposal or other event falling within subsection (3) is to be made on the transferee.

## **268 Loss of relief if VCT approval withdrawn**

- (1) This section applies if—
- (a) the approval of any company as a VCT is withdrawn, and
  - (b) the withdrawal of the approval is not one to which section 281(3) (VCT approval treated as never having been given) applies.
- (2) Any person who, at the time when the withdrawal takes effect, is holding any shares issued by the company by reference to which VCT relief has been obtained is treated for the purposes of section 266 as having disposed of those shares—
- (a) immediately before that time, and
  - (b) otherwise than by way of a bargain made at arm's length.

## **269 Loss of relief which is subsequently found not to have been due**

Any VCT relief obtained which is subsequently found not to have been due is to be withdrawn.

## **270 Assessment on withdrawal or reduction of relief**

- (1) An assessment for withdrawing or reducing VCT relief under any of sections 266 to 269 must be made for the tax year for which the relief was obtained.
- (2) No assessment for withdrawing or reducing VCT relief obtained by reference to shares issued to any individual may be made because of any event occurring after the individual's death.

*Supplementary*

## **271 Provision of information**

- (1) If an event occurs that results in any VCT relief falling to be withdrawn or reduced, the individual by whom the relief was obtained must, within 60 days of coming to know

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of the event, give notice to an officer of Revenue and Customs containing particulars of the event.

- (2) If an officer of Revenue and Customs has reason to believe that a person has not given a notice which the person is required to give under subsection (1), the officer may by notice require the person to provide the officer, within such time as may be specified in the notice, with such information relating to the event as the officer may reasonably require for the purposes of the provisions of this Chapter.
- (3) The period specified in a notice under subsection (2) must be at least 60 days.
- (4) If a company which is a VCT issues to any individual eligible shares to which section 261(4) applies, it must—
  - (a) at the time of the issue of those shares, give the individual a notice stating that the individual is not eligible for VCT relief by reference to those shares, and
  - (b) not later than 3 months after the issue of those shares, give a copy of that notice to an officer of Revenue and Customs.
- (5) No obligation as to secrecy imposed by statute or otherwise prevents an officer of Revenue and Customs from disclosing to a VCT that VCT relief has been obtained by reference to a particular number or proportion of its shares.

## 272 Regulations as to procedure etc

- (1) This section applies to VCT relief and relief for which the following provide—
  - (a) section 151A of TCGA 1992 (VCTs: reliefs),
  - (b) Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment),
  - (c) Chapter 5 of Part 6 of ITTOIA 2005 (VCT dividends), and
  - (d) regulations under Chapter 5 of this Part.
- (2) The Treasury may by regulations make such provision as they consider appropriate for—
  - (a) giving effect to relief to which this section applies, and
  - (b) preventing such relief from being given unless a claim is made in accordance with the regulations and such other requirements as may be imposed by the regulations have been met.
- (3) Regulations under this section may make provision as to the manner in which, and the persons by whom, relief to which this section applies is to be claimed.

## 273 Interpretation of Chapter

- (1) In this Chapter “eligible shares”, in relation to a company which is a VCT, means ordinary shares in the VCT which, throughout the period of 5 years beginning on the date on which they are issued, carry—
  - (a) no present or future preferential right to dividends or to a company's assets on its winding up, and
  - (b) no present or future right to be redeemed.
- (2) In this Chapter references to a disposal of shares include references to a disposal of an interest or right in or over shares.



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## CHAPTER 3

### VCT APPROVALS

#### *Giving of approval*

#### **274 Requirements for the giving of approval**

- (1) Subject to section 275, the Commissioners for Her Majesty's Revenue and Customs must not approve a company for the purposes of this Part unless it is shown to their satisfaction that the conditions mentioned in subsection (2)—
  - (a) are met in relation to the most recent complete accounting period of the company, and
  - (b) will be met in relation to the accounting period of the company which is current when the application for approval is made.
- (2) The conditions applied by subsection (1) (which are also applied by section 275(1) and other provisions of this Chapter) are set out in column 2 of the following table together with, in column 1 of the table, the descriptions by which they are referred to. In each of those conditions “the relevant period” means the accounting period that is relevant for the purposes of the particular provision by which the condition is applied.

<i>Description</i>	<i>Condition</i>
The listing condition	The shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) have been or will be <sup>F66</sup> included in the official UK list throughout the relevant period]
The nature of income condition	The company's income in the relevant period has been or will be derived wholly or mainly from shares or securities
The income retention condition	The company has not retained or will not retain an amount which is greater than 15% of the income it derived or will derive in the relevant period from shares or securities
The 15% holding limit condition	No holding in any company, other than a VCT or a company that would qualify as a VCT but for the listing condition, has represented or will represent at any time during the relevant period more than 15% by value of the company's investments
The 70% qualifying holdings condition	At least 70% by value of the company's investments has been or will be represented throughout the relevant

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	period by shares or securities included in qualifying holdings of the company
The 30% eligible shares condition	At least 30% by value of the company's qualifying holdings has been or will be represented throughout the relevant period by holdings of eligible shares

- (3) The conditions mentioned in subsection (2) are supplemented as follows—
- (a) the nature of income condition and the income retention condition by section 276,
  - (b) the 15% holding limit condition by section 277,
  - (c) the 15% holding limit condition, the 70% qualifying holdings condition and the 30% eligible shares condition by sections 278 and 279,<sup>F67</sup>...
  - (d) the 70% qualifying holdings condition and the 30% eligible shares condition by section 280.<sup>F68</sup>, and
  - (e) the 70% qualifying holdings condition by section 280A]

#### Textual Amendments

**F66** Words in s. 274(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(6\)](#)

**F67** Word in s. 274(3)(c) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(16\)](#)

**F68** S. 274(3)(e) and word inserted (with effect in accordance with Sch. 16 para. 20(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 20\(2\)\(4\)](#)

## 275 Alternative requirements for the giving of approval

- (1) This section applies if one or more of the conditions mentioned in section 274(2) are not met with respect to a company in relation to its most recent complete accounting period.
- (2) The Commissioners for Her Majesty's Revenue and Customs may still approve the company for the purposes of this Part if they are satisfied that the condition or conditions in question—
  - (a) will be met in relation to the period mentioned in subsection (3), and
  - (b) will continue to be met in relation to accounting periods following that period.
- (3) The period is—
  - (a) in relation to the listing condition, the nature of income condition, the income retention condition and the 15% holding limit condition, the accounting period of the company which is current when the application for approval is made, or its next accounting period,
  - (b) in relation to the 70% qualifying holdings condition and the 30% eligible shares condition, an accounting period of the company beginning no more than 3 years after the time when the approval is given or, if earlier, when the approval takes effect.

## 276 Conditions relating to income

- (1) Subsections (2) and (3) apply in determining for the purposes of the nature of income condition and the income retention condition—

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- (a) the amount of a company's income, or
  - (b) the amount of income which a company derives from shares or securities.
- (2) The amounts to be brought into account under Chapter 2 of Part 4 of FA 1996 in respect of the company's loan relationships are to be determined without reference to any debtor relationship of the company.
- (3) The excess of any relevant credits over any relevant debits is to be treated as income which the company derives from shares or securities.

In this subsection “relevant credits” and “relevant debits” are credits and debits brought into account by virtue of paragraph 14(3) of Schedule 26 to FA 2002 as if they were non-trading credits or non-trading debits.
- (4) The income retention condition does not apply as regards an accounting period if the amount which the company would be required to distribute in order to meet that condition is less than—
  - (a) £10,000, or
  - (b) if the period is shorter than 12 months, a proportionately reduced amount.
- (5) The income retention condition does not apply as regards an accounting period if—
  - (a) the company is required to retain income in respect of the period by virtue of a restriction imposed by law, and
  - (b) the amount of income which the company is so required to retain in respect of the period exceeds an amount equal to 15% of the income the company derives from shares or securities.
- (6) Subsection (5) does not apply if—
  - (a) the amount of income the company retains in respect of the accounting period exceeds the amount of income it is required, by virtue of a restriction imposed by law, to retain in respect of the period, and
  - (b) the sum of the excess and any amount of income the company distributes in respect of the period is at least—
    - (i) £10,000, or
    - (ii) if the period is shorter than 12 months, a proportionately reduced amount.

## **277 The 15% holding limit condition**

- (1) If the 15% holding limit condition was met when a holding in a company was acquired or last added to, the condition is treated as continuing to be met until an addition is next made to it.
- (2) “Holding in a company” means the shares or securities (whether of one class or more than one class) held in any one company.
- (3) An addition is made to a holding in a company whenever the company whose holding it is—
  - (a) acquires further shares or securities in the company, but
  - (b) does not do so by being allotted shares or securities without becoming liable to give any consideration.
- (4) For the purposes of this section—

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- (a) holdings in companies which—
  - (i) are members of a group, whether or not including the company whose holdings they are (“company A”), and
  - (ii) are not excluded from the 15% holding limit condition,
 are to be treated as holdings in a single company, and
- (b) if company A is a member of a group, money owed to it by another member of the group is to be treated—
  - (i) as a security of the latter held by company A, and
  - (ii) accordingly as, or as part of, the holding of company A in the company owing the money.

For the purposes of this subsection “group” means a company and all companies which are its 51% subsidiaries.

- (5) Subsection (6) applies if, in connection with a scheme of reconstruction—
  - (a) a company issues shares or securities,
  - (b) the shares or securities are issued to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, and
  - (c) those persons do not become liable to give any consideration for the shares or securities.

In this subsection “scheme of reconstruction” has the same meaning as in section 136 of TCGA 1992.

- (6) For the purposes of this section—
  - (a) a holding of the shares or securities in the second company, and
  - (b) a corresponding holding of the shares or securities issued by the company,
 are to be regarded as the same holding.

## **278 Conditions relating to value of investments: general**

- (1) This section and section 279 apply for the purposes of the 15% holding limit condition, the 70% qualifying holdings condition and the 30% eligible shares condition (“the relevant conditions”).
- (2) The value of a holding of investments of any description is to be taken, unless subsection (3) applies, to be its value when acquired.
- (3) If, in the case of a holding of investments of any description—
  - (a) the holding is added to by a further holding of investments of that description, or
  - (b) any payment is made in discharge, in whole or in part, of any obligation attached to the holding that (by discharging the whole or any part of the obligation) increases the value of the holding,
 the value of the holding is to be taken to be its value immediately after the most recent addition or payment.
- (4) For the purposes of this section an addition is made to a holding of investments of any description whenever the company whose holding it is—
  - (a) acquires further investments of that description, but

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- (b) does not do so by being allotted shares or securities in a company without becoming liable to give any consideration.
- (5) Subsection (6) applies if, in connection with a scheme of reconstruction—
  - (a) a company issues shares or securities,
  - (b) the shares or securities are issued to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, and
  - (c) those persons do not become liable to give any consideration for the shares or securities.

In this subsection “scheme of reconstruction” has the same meaning as in section 136 of TCGA 1992.

- (6) For the purposes of this section—
  - (a) a holding of the shares or securities of any description in the second company, and
  - (b) a corresponding holding of the shares or securities issued by the company,are to be regarded as the same holding.

## **279 Conditions relating to value of investments: qualifying holdings**

- (1) If—
  - (a) any shares (“new shares”) are exchanged for other shares (“old shares”) under arrangements in relation to which section 326 (restructuring arrangements) applies, and
  - (b) those arrangements have not ceased by virtue of section 326(5) to be arrangements by reference to which requirements of Chapter 4 are treated as met,

the value of the new shares is taken to be the same as the value, when last valued in accordance with subsection (2) or (3) of section 278, of the old shares for which they are exchanged.

- (2) In subsection (1)—
  - (a) references to shares in a company include references to any securities of that company, and
  - (b) the reference to the value of the new shares includes references to the value of those shares both—
    - (i) at the time of their acquisition, and
    - (ii) immediately after any subsequent addition to a holding of the new shares that is made under the arrangements.

- (3) If—
  - (a) shares (“new shares”) are issued to a company as a result of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company (“convertibles”), and
  - (b) section 329 (conversion of convertible shares and securities) applies in relation to the issue of the new shares,

the value of the new shares at the time of their acquisition is taken to be the same as the value, when last valued in accordance with subsection (2) or (3) of section 278, of the convertibles for which they are exchanged.

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- (4) Regulations under section 330 may make provision for securing that if—
- (a) there is an exchange of shares to which regulations under section 330 apply, and
  - (b) the new shares are treated by virtue of the regulations as meeting the requirements of Chapter 4,
- the value of the holding of the new shares, and of any original shares that are retained under the exchange, is taken to be an amount such that the requirements of the relevant conditions do not cease to be met because of the exchange.
- (5) In subsection (4)—
- (a) “shares” includes securities, and
  - (b) “exchange of shares”, “new shares” and “original shares” have the same meaning as in section 330.

## **280 Conditions relating to qualifying holdings and eligible shares**

- (1) Subsection (2) applies, subject to any regulations under subsection (3), if—
- (a) there has been an issue of ordinary share capital of a company (“the first issue”),
  - (b) a VCT approval of that company has taken effect on or before the day of the making of the first issue, and
  - (c) a further issue of ordinary share capital of that company has been made since the making of the first issue.
- (2) If this subsection applies, the use to which the money raised by the further issue is put, and the use of any money deriving from that use, are ignored in determining whether either or both of the 70% qualifying holdings condition and the 30% eligible shares condition are, have been or will be met in relation to—
- (a) the accounting period in which the further issue is made, or
  - (b) any later accounting period ending no more than 3 years after the making of the further issue.
- (3) The Treasury may by regulations make provision for subsection (2)—
- (a) not to apply, or to be treated as not having applied, in specified cases, or
  - (b) to apply, or to be treated as having applied, in specified cases—
    - (i) only to a specified extent, or
    - (ii) only if specified conditions (including conditions requiring approvals to be obtained) are met.
- (4) Provision made by regulations under subsection (3) may (but need not) be made so that, in any particular case, subsection (2)—
- (a) does not apply, or is treated as not having applied, at prescribed times or with effect from a prescribed time, or
  - (b) applies, or is treated as having applied, in accordance with provision made under subsection (3)(b) at prescribed times or with effect from a prescribed time.
- (5) In subsection (3) “specified” means specified by regulations and in subsection (4) “prescribed” means specified by, or determined under, regulations.
- (6) Section 324 applies in relation to—

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- (a) regulations under subsection (3), and
  - (b) any power conferred by that subsection,
- as it applies in relation to regulations under Chapter 5 and a power conferred by any provision of that Chapter.

## **[<sup>F69</sup>280A The 70% qualifying holdings condition: disposal of holding**

- (1) This section applies if—
- (a) a company which is a VCT disposes of shares or securities (“the holding”),
  - (b) the consideration for the disposal does not consist wholly of new qualifying holdings, and
  - (c) the holding was comprised in the company's qualifying holdings throughout the 6 months ending immediately before the disposal.
- (2) For the purpose of determining whether the 70% qualifying holdings condition is, has been or will be met—
- (a) the company is to be treated as if it continued to hold the holding for the period of 6 months beginning with the disposal (but see subsection (4)), and
  - (b) the value of the company's investments in that period is to be treated as reduced by the amount of any monetary consideration for the disposal.
- (3) The value of the holding in the period mentioned in subsection (2)(a) is to be treated as equal to its value (determined in accordance with this Chapter) immediately before the disposal.
- (4) If the consideration for the disposal includes new qualifying holdings, subsection (2) (a) has effect as if the reference to the holding were to the appropriate proportion of the holding (the value of which is that proportion of the value of the holding, determined in accordance with subsection (3)).
- (5) The appropriate proportion is—

$$\frac{TC - NQH}{TC}$$

where—

TC is the market value (at the time of the disposal) of the total consideration for the disposal, and

NQH is the market value (at that time) of the new qualifying holdings.

- (6) If at any time the value of the company's investments would by virtue of subsection (2) (b) be reduced to an amount less than the value of its qualifying holdings, the value of its investments at that time is to be treated as equal to the value of its qualifying holdings.
- (7) “New qualifying holdings” means shares or securities which (on transfer to the company) are comprised in the company's qualifying holdings.
- (8) If (and to the extent that) the holding was acquired with money the use of which is at any time ignored by virtue of section 280(2), subsections (2) to (6) do not apply in relation to that time.

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- (9) Nothing in this section applies in relation to disposals between companies that are merging (within the meaning of section 323).]

#### Textual Amendments

**F69** S. 280A inserted (with effect in accordance with Sch. 16 para. 20(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 20\(3\)](#), (4)

### *Withdrawal of approval*

## 281 Withdrawal of VCT approval of a company

- (1) The Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) may withdraw the VCT approval of a company if at any time it appears to them that there are reasonable grounds for believing—
- (a) that the conditions for the approval of the company were not met at the time of the approval,
  - (b) in a case where the Commissioners were satisfied for the purposes of section 274(1)(b) or 275(2) that any of the conditions mentioned in section 274(2) would be met in relation to any period, that the condition is one which will not be, or has not been, met in relation to that period,
  - (c) in the case of a company approved under subsection (2) of section 275 (read with paragraph (b) of subsection (3) of that section), that the company has not met such other conditions as may be prescribed by regulations made by the Commissioners in relation to—
    - (i) the period of 3 years mentioned in that paragraph, or
    - (ii) any part of that period,
  - (d) in a case where the use of any money falls to be ignored for any accounting period in accordance with section 280(2), that—
    - (i) the first accounting period of the company for which the use of that money will not be ignored will be a period in relation to which any of the conditions mentioned in section 274(2) will fail to be met, or
    - (ii) the company has not met such other conditions as may be prescribed by regulations made by the Commissioners in relation to, or to any part of, an accounting period for which the use of that money falls to be ignored, or
  - (e) that—
    - (i) the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of any of the conditions mentioned in section 274(2) to be met, and
    - (ii) the failure was not or will not be one which, at the time of the approval, was allowed for in relation to that period by virtue of section 275(2).
- (2) Subject to subsections (3) and (4), the withdrawal of the approval of a company for the purposes of this Part has effect as from the time when notice of the withdrawal is given to the company.



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- (3) If, in the case of a company approved as a VCT in the exercise of the power conferred by section 275(2), the approval is withdrawn at a time before all of the conditions mentioned in section 274(2) have been met with respect to the company concerned—
- (a) in relation to a complete accounting period of 12 months, or
  - (b) in relation to successive complete accounting periods constituting a continuous period of at least 12 months,
- the withdrawal of the approval has the effect that the approval is for all purposes treated as never having been given.

- (4) A notice withdrawing the approval of a company for the purposes of this Part may specify a time falling before the time mentioned in subsection (2) as the time from which the withdrawal is to be treated as having effect for the purposes of section 100 of TCGA 1992 (exemption for venture capital trusts etc).

But the time so specified must be no earlier than the beginning of the accounting period in relation to which it appears to the Commissioners that the condition by reference to which the approval is withdrawn has not been, or will not be, met.

- (5) Despite any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any VCT approval may be made at any time before the end of the period of 3 years beginning with the time when the notice of withdrawal is given.

## **282 Withdrawal of VCT approval in cases for which provision made under section 280(3)**

- (1) The Treasury may by regulations make provision for withdrawal of VCT approval of a company to be treated—
- (a) in a case where the withdrawal is by reference to a condition for approval that would have been, or would be, met but for provision made under section 280(3), and
  - (b) for the purposes of enactments specified by regulations,
- as having taken effect as from a time specified in the notice of withdrawal that is earlier than the time when the notice is given to the company.
- (2) Provision made under subsection (1) has effect subject to the provisions of section 281(4) (retrospective effect of notices of withdrawal of VCT approval) as to the earliest time that may be specified by such a notice.
- (3) Section 324 applies in relation to—
- (a) regulations under subsection (1), and
  - (b) any power conferred by that subsection,
- as it applies in relation to regulations under Chapter 5 and a power conferred by any provision of that Chapter.

### *Supplementary*

## **283 Time as from which VCT approval has effect**

- (1) A VCT approval has effect as from the time specified in the approval.

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- (2) That time, if it falls before the time when the VCT approval is given, must be no earlier than the time when the application was made.
- (3) If the Commissioners for Her Majesty's Revenue and Customs give a VCT approval, they may stipulate that the approval is to have effect as from the time when the application for the approval was made or any subsequent time.

## 284 Power to make regulations as to procedure

[<sup>F70</sup>(1) Regulations under section 272 may make provision—

- (a) as to the making of applications for VCT approvals and otherwise as to the procedure to be followed in relation to any such applications and the giving of such approvals,
- [<sup>F71</sup>(aa) for and in connection with the making by a company of an application to the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) for relief in respect of a breach (including a future breach) of the conditions for its VCT approval to continue in force,]
- (b) as to the procedure to be followed in connection with the withdrawal of VCT approvals,
- (c) as to the obligations of a company which is a VCT if it should appear to the company
  - [<sup>F72</sup>(i) that the conditions for its VCT approval to continue in force are no longer met, or
  - (ii) that it is likely that those conditions will cease to be met,]
- (d) as to the accounts, records, returns and other information to be kept, and provided or otherwise made available to the Commissioners <sup>F73</sup>..., by companies which are or have been VCTs and by persons who hold or have held shares in such companies, and
- (e) as to the persons liable to account for any tax becoming due where a VCT approval is withdrawn.]

[<sup>F74</sup>(2) In subsection (1)(aa), the reference to relief in respect of a breach of the conditions mentioned there is to a determination by the Commissioners that they will not exercise their power to withdraw the company's VCT approval by reason of the breach for such period as they may determine (and subject to such conditions as they may determine).

- (3) The provision that may be made by virtue of subsection (1)(aa) includes—
  - (a) provision as to the procedure to be followed in relation to applications and determinations,
  - (b) provision as to the grounds on which applications may be made or determined, and
  - (c) provision conferring a discretion to be exercised by the Commissioners.]

### Textual Amendments

**F70** S. 284(1): s. 284 renumbered as s. 284(1) (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)](#)

**F71** S. 284(1)(aa) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(a\)](#)

**F72** Words in s. 284(1)(c) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(b\)](#)

**F73** Words in s. 284(1)(d) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(1\)\(c\)](#), [Sch. 27 Pt. 2\(16\)](#)

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**F74** S. 284(2)(3) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 21\(2\)](#)

## 285 Interpretation of Chapter

- (1) Chapter 4 has effect for interpreting references in this Chapter to a “qualifying holding”.
- (2) In this Chapter and the following Chapters of this Part “securities”, in relation to a company, includes any liability of the company in respect of a loan (whether secured or not), except that it does not include—
  - (a) any liability of the company in respect of a loan which has been made to the company on terms which allow any person to require—
    - (i) the loan to be repaid, or
    - (ii) any stock or security relating to the loan to be re-purchased or redeemed,  
within the period of 5 years from the making of the loan or, as the case may be, the issue of the stock or security, or
  - (b) any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period.

But see sections 317(4) and 328(2).

- (3) In this Chapter “eligible shares”, in relation to a company, means ordinary shares in the company which carry—
  - (a) no present or future preferential right to dividends or to the company's assets on its winding up, and
  - (b) no present or future right to be redeemed.
- (4) Any reference in this Chapter to a company's investments is taken to include, so far as it would not otherwise do so—
  - (a) money in the company's possession, and
  - (b) any sum owed to the company by another person if the company has account-holder's rights over that sum.
- (5) For the purposes of subsection (4)(b) a company has “account-holder's rights” over a sum owed to the company if—
  - (a) the company has a right (whether or not the exercise of the right is subject to conditions) to require the other person to pay out the sum, or amounts out of the sum, to the company or at the company's direction, and
  - (b) the sum is owed to the company—
    - (i) as a result of amounts having been paid to the other person by or for the company, or
    - (ii) as a result of the other person having identified a sum in respect of which the company may exercise such a right.
- (6) Subsection (5) does not have effect to cause a company's investments to be taken to include anything to which the company is not beneficially entitled, but for this purpose a company is taken to be beneficially entitled to—
  - (a) sums subscribed for shares issued by it, and
  - (b) anything to which it is entitled that (directly or indirectly) represents such sums.

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## CHAPTER 4

### QUALIFYING HOLDINGS

#### *Introduction*

#### **286 Qualifying holdings: introduction**

- (1) If any shares in or securities of any company (“the relevant company”) are at any time held by another company (“the investing company”), this Chapter applies for determining whether and to what extent those shares or securities (“the relevant holding”) are, for the purposes of Chapter 3, to be regarded as at that time comprised in the investing company’s qualifying holdings.
- (2) The relevant holding is to be regarded as comprised in the investing company’s qualifying holding at any time if—
  - (a) all the following requirements of this Chapter are met at that time in relation to the relevant company and the relevant holding, and
  - (b) the relevant holding consists of shares or securities which were first issued by the relevant company to the investing company and have been held by the investing company ever since.
- (3) The requirements are those imposed as to—
  - (a) maximum qualifying investment (see section 287),
  - (b) no guaranteed loan (see section 288),
  - (c) proportion of eligible shares (see section 289),
  - (d) trading (see section 290),
  - (e) the carrying on of a qualifying activity (see section 291),
  - [<sup>F75</sup>(ea) the maximum amount raised annually through risk capital schemes (see section 292A),]
  - (f) use of the money raised (see section 293),
  - (g) the relevant company carrying on the relevant qualifying activity (see section 294),
  - (h) unquoted status (see section 295),
  - (i) control and independence (see section 296),
  - (j) gross assets (see section 297),
  - [<sup>F76</sup>(ja) number of employees (see section 297A),]
  - (k) qualifying subsidiaries (see section 298), and
  - (l) property managing subsidiaries (see section 299).
- (4) Subject to section 293(7), subsection (5) applies if—
  - (a) the requirements of section 287, 293 or 294 would be met as to only part of the money raised by the issue of the relevant holding, and
  - (b) that holding is not otherwise capable of being treated as comprising separate holdings.
- (5) If this subsection applies, this Chapter has effect in relation to the relevant holding as if it were two separate holdings consisting of—
  - (a) a holding from which the part of the money mentioned in subsection (4)(a) was raised, and

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- (b) a holding from which the remainder was raised.

Chapter 3 has effect as if the value of the relevant holding were to be apportioned between the two holdings treated as subsisting by this subsection.

#### Textual Amendments

- F75** S. 286(3)(ea) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 6\(2\)](#) (with [Sch. 16 para. 6\(5\)\(6\)](#))
- F76** S. 286(3)(ja) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(2\)\(5\)](#) (with [Sch. 16 para. 3\(6\)\(7\)](#))

### *The requirements*

## **287 The maximum qualifying investment requirement**

- (1) The requirement of this section is that the relevant holding did not, when it was issued, represent an investment in excess of the maximum qualifying investment for the relevant period.
- (2) Subject to subsection (7), the maximum qualifying investment for any period is exceeded so far as the total amount of money which—
  - (a) is raised in that period, and
  - (b) is so raised by the issue to the investing company during that period of shares in or securities of the relevant company,exceeds £1 million.
- (3) If the relevant holding represented, when issued, an investment in excess of the maximum qualifying investment for the relevant period—
  - (a) the shares or securities which represented the excess are not to be regarded as part of the relevant holding, and
  - (b) the amount of money raised by those shares or securities is to be ignored for the purposes of any subsequent application of subsection (2).
- (4) For the purposes of this section, if there is any question as to whether any shares in or securities of the relevant company which are for the time being held by the investing company represent an investment in excess of the maximum qualifying investment for any period, that question is determined on the following assumption in relation to disposals by the investing company.
- (5) The assumption is that, as between shares or securities of the same description, those which represent the whole or any part of the excess are disposed of before those which do not.
- (6) Subsection (7) applies if—
  - (a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,
  - (b) the trade which meets the requirement of section 291 was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture, and

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- (c) the other partners or parties to the joint venture include at least one other company.
- (7) If this subsection applies, this section has effect in relation to the relevant company as if the sum of money for the time being specified in subsection (2) were to be divided by the number of companies (including the relevant company) which, at the time when the relevant holding was issued, were members of the partnership or, as the case may be, parties to the joint venture.
- (8) For the purposes of this section “the relevant period” is the period beginning with whichever is the earlier of—
  - (a) the time 6 months before the issue of the relevant holding, and
  - (b) the beginning of the tax year in which the issue of that holding took place, and (in either case) ending with the issue of that holding.

## **288 The no guaranteed loan requirement**

- (1) The requirement of this section is that there are no securities relating to a guaranteed loan in the relevant holding.
- (2) For the purposes of this section, a security relates to a guaranteed loan if (and only if) there are arrangements for the investing company to be or to become entitled to receive anything (whether directly or indirectly) from a third party in the event of the failure by any person to comply with—
  - (a) the terms of the loan to which the security relates, or
  - (b) the terms of the security.
- (3) For the purposes of subsection (2) it does not matter whether the arrangements apply in all cases of a failure to comply or only in some such cases.
- (4) For the purposes of this section “third party” means any person except—
  - (a) the relevant company, and
  - (b) if the relevant company is a parent company that meets the trading requirement in section 290(1)(b), the subsidiaries of that company.

## **289 The proportion of eligible shares requirement**

- (1) The requirement of this section is that eligible shares represent at least 10% by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the investing company.
- (2) For the purposes of this section the value at any time of any shares in or securities of a company is taken (subject to subsection (4)) to be their value immediately after—
  - (a) any relevant event occurring at that time, or
  - (b) if no relevant event occurs at that time, the last relevant event to occur before that time.
- (3) In subsection (2) “the relevant event”, in relation to any shares in or securities of the relevant company, means—
  - (a) the acquisition by the investing company of those shares or securities,
  - (b) the acquisition by the investing company of any other shares in or securities of the relevant company which—
    - (i) are of the same description as those shares or securities, and

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- (ii) are acquired by the investing company otherwise than by being allotted to the investing company without its being liable to give any consideration, or
  - (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the investing company as (by discharging that obligation) increases the value of any such shares or securities.
- (4) If at any time the value of any shares or securities held by the investing company is less than the consideration given by the investing company for those shares or securities, it is to be assumed for the purposes of this section that the value of the shares or securities at that time is equal to the amount of that consideration.
- (5) In this section “eligible shares” has the same meaning as in Chapter 3 (see section 285(3)).

## **290 The trading requirement**

- (1) The requirement of this section is that—
  - (a) the relevant company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
  - (b) the relevant company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the relevant company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
  - (a) the relevant company is treated as a parent company for the purposes of subsection (1)(b), and
  - (b) the reference in subsection (1)(b) to the group includes the relevant company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purposes of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purpose of determining the business of a group, activities of a group company are ignored so far as they consist in—
  - (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
  - (b) the making of loans to another group company, or
  - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or
  - (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
    - (i) that a qualifying trade to be carried on by a group company will be derived, or

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- (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in sub-paragraph (i) or (ii) of subsection (5)(d) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—
  - “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,
  - “mainly trading subsidiary” means a qualifying subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,
  - “non-qualifying activities” means—
    - (a) excluded activities, and
    - (b) activities carried on otherwise than in the course of a trade.
- (8) This section is supplemented by section 300 (meaning of “qualifying trade”) and sections 303 to 310 (excluded activities).

## 291 The carrying on of a qualifying activity requirement

- (1) The requirement of this section, at any time on or after the issue of the relevant holding, is that a qualifying company (whether or not the same such company at every such time) must have been carrying on a qualifying activity at all times from the issue of the holding to the time in question.
- (2) A qualifying trade carried on wholly or mainly in the United Kingdom is a qualifying activity.
- (3) Preparing to carry on a qualifying trade is a qualifying activity if, at the time when the relevant holding was issued, the trade was intended to be carried on wholly or mainly in the United Kingdom by a qualifying company.

This is subject to subsections (4) and (5).

- (4) The requirement of this section is not capable of being met by virtue of subsection (3) at any time after the end of the period of two years beginning with the issue of the relevant holding unless—
  - (a) the intended trade was begun to be carried on by a qualifying company before the end of that period, and
  - (b) at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has been carrying on a qualifying trade wholly or mainly in the United Kingdom.
- (5) The requirement of this section is also not capable of being met by virtue of subsection (3) at any time after the abandonment, within the period mentioned in subsection (4), of the intention in question.
- (6) In determining for the purposes of subsection (4)(a) when the intended trade was begun to be carried on by a qualifying company which is a qualifying 90% subsidiary of the



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relevant company, any carrying on by it of the trade before it became such a subsidiary of the relevant company is ignored.

- (7) In this section “qualifying company” means the relevant company or any qualifying 90% subsidiary of that company.
- (8) The reference in subsection (7) to a qualifying company which is a qualifying 90% subsidiary of the relevant company includes, in its application to subsection (3), a reference to any existing or future qualifying company which will be a qualifying 90% subsidiary of the relevant company at any future time.

## **292 Ceasing to meet requirements because of administration or receivership**

- (1) A company is not regarded as ceasing to meet the requirement of section 290 or 291 merely because of anything done in consequence of its being in administration or receivership.
- (2) Subsection (1) applies only if—
  - (a) the entry into administration or receivership, and
  - (b) everything done as a consequence of the company being in administration or receivership,is for genuine 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.

## **[<sup>F77</sup>292A The maximum amount raised annually through risk capital schemes requirement]**

- (1) The total amount of relevant investments made in the relevant company in the year ending with the date the relevant holding is issued must not exceed £2 million.
- (2) In subsection (1), the reference to relevant investments made in the relevant company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the relevant company (whether or not it was such a subsidiary when the investment was made).
- (3) A “relevant investment” is made in a company if—
  - (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205 (enterprise investment scheme), or
    - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),in respect of the shares.
- (4) For the purposes of subsections (1) and (2), an investment within subsection (3)(b) is regarded as made when the shares are issued.
- (5) Subsection (6) applies if, by virtue of the provision of a compliance statement under section 205 above or paragraph 42 of Schedule 15 to FA 2000, the requirement of this section is not met.
- (6) The requirement is to be treated as having been met throughout the period—

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- (a) beginning with the time the relevant holding was issued, and
- (b) ending with the time the compliance statement was provided.]

#### Textual Amendments

**F77** S. 292A inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), **Sch. 16 para. 6(3)** (with [Sch. 16 paras. 6\(5\)\(6\), 8](#))

### 293 The use of the money raised requirement

- (1) The requirement of this section at any time on or after the issue of the relevant holding is that—
  - (a) if that time is not more than 12 months after the trading time, any of conditions A, B and C is met,
  - (b) if that time is more than 12 months but not more than 24 months after the trading time, either of conditions B and C is met, and
  - (c) in any other case, condition C is met.
- (2) Condition A is that at least 80% of the money raised by the issue of the relevant holding has been or is intended to be employed wholly for the purposes of a relevant qualifying activity.
- (3) Condition B is that at least 80% of the money raised by the issue of the relevant holding has been employed wholly for the purposes of the activity.
- (4) Condition C is that all of the money raised by the issue of the relevant holding has been employed wholly for the purposes of the activity.
- (5) In subsection (1) “the trading time” means whichever is applicable of the following—
  - (a) in a case where the requirement of section 291 was met in relation to the time when the relevant holding was issued and the relevant qualifying activity falls within subsection (2) of that section, the time when the relevant holding was issued, and
  - (b) in a case where that requirement was met in relation to that time and the relevant qualifying activity falls within subsection (3) of that section, the time when the condition in subsection (4)(a) of that section was met by a qualifying company beginning to carry on the intended trade.
- (6) For the purposes of this section money is not to be treated as employed otherwise than wholly for the purposes of a relevant qualifying activity if the only amount employed for other purposes is an amount which is not a significant amount.
- (7) Nothing in section 286(5) requires any money whose use is ignored by virtue of subsection (6) to be treated as raised by a different holding.
- (8) In this section—
  - “qualifying activity” and “qualifying company” have the same meaning as in section 291, and
  - a qualifying activity is a “relevant qualifying activity” if—
    - (a) it was also a qualifying activity at the time when the relevant holding was issued, or

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- (b) it is a qualifying trade and preparing to carry it on was a qualifying activity at that time.

## **294 The relevant company to carry on the relevant qualifying activity requirement**

- (1) The requirement of this section is met if, at no time after the issue of the relevant holding, has the relevant qualifying activity in question been carried on by a person other than—

- (a) the relevant company, or
- (b) a qualifying 90% subsidiary of that company.

In this subsection “the relevant qualifying activity in question” means the relevant qualifying activity by reference to which the requirement of section 293 is met.

- (2) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question by a person other than the relevant company, or a qualifying subsidiary of that company, at any time—

- (a) after the issue of the relevant holding, and
- (b) before the relevant company, or any qualifying 90% subsidiary of that company, carries on that trade.

- (3) The requirement of this section is not to be regarded as failing to be met merely because of the carrying on of the trade in question—

- (a) by the partners in a partnership of which the relevant company, or a qualifying 90% subsidiary of that company, is a member, or
- (b) by the parties to a joint venture to which the relevant company, or a qualifying 90% subsidiary of that company, is a party.

- (4) The requirement of this section is not to be regarded as failing to be met if—

- (a) merely because of anything done as a consequence of the relevant company or any other company being in administration or receivership, or
- (b) merely because of the relevant company or any other company being wound up or dissolved without winding up,

the trade in question ceases to be carried on by the relevant company or a qualifying 90% subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is 12 months before the issue of the relevant holding, with the relevant company.

- (5) Subsection (4) applies only if—

- (a) the entry into administration or receivership and everything done in consequence of the company concerned being in administration or receivership, or
- (b) the winding up or dissolution,

is for genuine commercial reasons and is not part of a scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax.

- (6) In this section “the trade in question” means so much of the relevant qualifying activity mentioned in subsection (1) as consists of—

- (a) a trade which was being carried on at the time when the relevant holding was issued, or
- (b) a trade for the carrying on of which preparations were being made at that time.

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- (7) The definition of “relevant qualifying activity” in subsection (8) of section 293 applies for the purposes of this section as it applies for the purposes of that section.

## 295 The unquoted status requirement

- (1) The requirement of this section is that the relevant company must be an unquoted company.
- (2) In this section “unquoted company” means a company none of whose shares, stocks, debentures or other securities are marketed to the general public.
- (3) For the purposes of subsection (2), shares, stocks, debentures or other securities are marketed to the general public if they are—
  - (a) listed on [<sup>F78</sup>a recognised stock exchange, ]
  - (b) listed on a designated exchange in a country outside the United Kingdom, or
  - (c) dealt in <sup>F79</sup>... outside the United Kingdom by such means as may be designated.
- (4) In subsection (3)(b) and (c) “designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that provision.
- (5) An order made for the purposes of subsection (3)(b) may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.
- (6) If—
  - (a) any shares in or securities of a company are included in the qualifying holdings of the investing company, and
  - (b) that company ceases to be an unquoted company at any time while the investing company is approved as a VCT,
 the requirements of this section are to be treated, in relation to shares or securities acquired before that time, as continuing to be met for a period of 5 years after that time.

### Textual Amendments

- F78** Words in s. 295(3)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(a\)](#)
- F79** Words in s. 295(3)(c) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(7\)\(b\)](#), [Sch. 27 Pt. 6\(5\)](#)

## 296 The control and independence requirement

- (1) The control element of the requirement is that—
  - (a) the relevant company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the relevant company, and
  - (b) no arrangements must be in existence by virtue of which the relevant company could fail to meet paragraph (a).
- (2) The independence element of the requirement is that—

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- (a) the relevant company must not be under the control of another company (or of another company and any other person connected with that other company), and
  - (b) no arrangements must be in existence by virtue of which the relevant company could fail to meet paragraph (a).
- (3) This section is subject to section 327(7) (exchange of shares).

## **297 The gross assets requirement**

- (1) The requirement of this section in the case of a relevant company that is a single company is that the value of the company's gross assets—
- (a) did not exceed £7 million immediately before the issue of the relevant holding, and
  - (b) did not exceed £8 million immediately afterwards.
- (2) The requirement of this section in the case of a relevant company that is a parent company is that the value of the group assets—
- (a) did not exceed £7 million immediately before the issue of the relevant holding, and
  - (b) did not exceed £8 million immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.

## **[<sup>F80</sup>297A The number of employees requirement**

- (1) If the relevant company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant holding is issued.
- (2) If the relevant company is a parent company, the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
- must be less than 50 when the relevant holding is issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
- Step 1*
- Find the number of full-time employees of the company.
- Step 2*
- Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
- The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
- (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or

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(ii) a student on vocational training.]

#### Textual Amendments

**F80** S. 297A inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(3\)\(5\)](#) (with [Sch. 16 para. 3\(6\), \(7\)](#))

### 298 The qualifying subsidiaries requirement

Any subsidiary that the relevant company has must be a qualifying subsidiary of the company.

### 299 The property managing subsidiaries requirement

- (1) Any property managing subsidiary that the relevant company has must be a qualifying 90% subsidiary of the company.
- (2) “Property managing subsidiary” means a subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.
- (3) In subsection (2) references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.

#### *Definitions*

### 300 Meaning of “qualifying trade”

- (1) For the purposes of this Chapter, a trade is a qualifying trade if—
  - (a) it is conducted on a commercial basis and with a view to the realisation of profits, and
  - (b) it does not consist wholly or as to a substantial part in the carrying on of excluded activities (see sections 303 to 310).
- (2) The carrying on of any activities of research and development from which it is intended—
  - (a) that a trade will be derived which—
    - (i) will be a qualifying trade, and
    - (ii) will be carried on wholly or mainly in the United Kingdom, or
  - (b) that a trade will benefit which—
    - (i) is or will be a qualifying trade, and
    - (ii) is or will be carried on wholly or mainly in the United Kingdom,
 is to be treated as the carrying on of a qualifying trade.

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- (3) But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.
- (4) References in this section to a trade are to be read without regard to the definition of “trade” in section 989.

### **301 Meaning of “qualifying 90% subsidiary”**

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying 90% subsidiary of the relevant company at any time when the following conditions are met—
  - (a) the relevant company possesses at least 90% of the issued share capital of, and at least 90% of the voting power in, the subsidiary,
  - (b) the relevant company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,be beneficially entitled to receive at least 90% of the assets of the subsidiary which would then be available for distribution to equity holders of the subsidiary,
  - (c) the relevant company is beneficially entitled to receive at least 90% of any profits of the subsidiary which are available for distribution to equity holders of the subsidiary,
  - (d) no person other than the relevant company has control of the subsidiary, and
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

<sup>[F81]</sup>(1A) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of a company that is not the relevant company (“company B”) is a qualifying 90% subsidiary of the relevant company if—

- (a) company A would be a qualifying 90% subsidiary of company B (if company B were the relevant company), and company B is a qualifying 100% subsidiary of the relevant company, or
- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the relevant company.

(1B) For the purposes of subsection (1A), no account is to be taken of any control the relevant company may have of company A.

(1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1) (a) to (e) would be met if—

- (a) company X were the subsidiary,
- (b) company Y were the relevant company, and
- (c) in subsection (1) for “at least 90%” in each place there were substituted “;100%”.]

(2) Subsections (3), (4) and (5) of section 302 apply in relation to the conditions in subsection (1)—

- (a) as they apply in relation to the conditions in subsection (2) of that section, but
- (b) with the omission from subsection (5) of “or (as the case may be) by another subsidiary of that company”.

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- (3) For the purposes of subsection (1)—
- (a) the persons who are equity holders of the subsidiary, and
  - (b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,
- are to be determined in accordance with paragraphs 1 and 3 of Schedule 18 to ICTA.
- (4) In making that determination—
- (a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and
  - (b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

#### Textual Amendments

**F81** S. 301(1A)-(1C) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 17, 18](#)

### 302 Meaning of “qualifying subsidiary”

- (1) For the purposes of this Chapter, a company (“the subsidiary”) is a qualifying subsidiary of the relevant company if the following conditions are met.
- (2) The conditions are that—
- (a) the subsidiary is a 51% subsidiary of the relevant company,
  - (b) no person other than the relevant company, or another of its subsidiaries, has control of the subsidiary, and
  - (c) no arrangements are in existence by virtue of which either of the conditions in paragraphs (a) and (b) would cease to be met.
- (3) The conditions do not cease to be met merely because the subsidiary or any other company is wound up, if the winding up—
- (a) is for genuine commercial reasons, and
  - (b) is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (4) The conditions do not cease to be met merely because of anything done as a consequence of the subsidiary or any other company being in administration or receivership, 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 genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (5) The conditions do not cease to be met merely because arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of that company of all its interest in the subsidiary, if the disposal—
- (a) is to be for genuine commercial reasons, and



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- (b) is not to be part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

### *Excluded activities*

## **303 Meaning of “excluded activities”**

- (1) The following are excluded activities for the purposes of sections 290 and 300—
  - (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments,
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution,
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities,
  - (d) leasing (including letting ships on charter or other assets on hire),
  - (e) receiving royalties or licence fees,
  - (f) providing legal or accountancy services,
  - (g) property development,
  - (h) farming or market gardening,
  - (i) holding, managing or occupying woodlands, any other forestry activities or timber production,
  - [<sup>F82</sup>(ia) shipbuilding,
  - (ib) producing coal,
  - (ic) producing steel,]
  - (j) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment,
  - (k) operating or managing nursing homes or residential care homes or managing property used as a nursing home or residential care home, and
  - (l) any activities which are excluded activities under section 310 (provision of services or facilities for another business).
- (2) Subsection (1) is supplemented by the following provisions—
  - (a) section 304 (wholesale and retail distribution),
  - (b) section 305 (leasing of ships),
  - (c) section 306 (receipt of royalties and licence fees),
  - (d) section 307 (property development),
  - [<sup>F83</sup>(da) section 307A (shipbuilding),
  - (db) section 307B (producing coal),
  - (dc) section 307C (producing steel),]
  - (e) section 308 (hotels and comparable establishments), and
  - (f) section 309 (nursing homes and residential care homes).

### **Textual Amendments**

**F82** S. 303(1)(ia)-(ic) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(a\), 10](#) (with [Sch. 11 paras. 12, 13](#))

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**F83** S. 303(2)(da)-(dc) inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 8\(b\), 10](#) (with [Sch. 11 paras. 12, 13](#))

### **304 Excluded activities: wholesale and retail distribution**

- (1) This section supplements section 303(1)(b).
- (2) In this section—
  - (a) subsections (3) and (4) are for determining whether a trade is a trade of wholesale or retail distribution, and
  - (b) subsections (5) and (6) are for determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution.
- (3) A trade of wholesale distribution is one in which goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.
- (4) A trade of retail distribution is one in which goods are offered or exposed for sale and sold to members of the general public for their use or consumption.
- (5) A trade of wholesale or retail distribution is not an ordinary trade of wholesale or retail distribution if—
  - (a) it consists to a substantial extent—
    - (i) in dealing in goods of a kind which are collected or held as an investment, or
    - (ii) in that activity and any other excluded activity taken together, and
  - (b) a substantial proportion of those goods are held for a period which is significantly longer than the period for which the trader would reasonably be expected to hold them while trying to dispose of them at their market value.
- (6) In determining whether a trade of wholesale or retail distribution is an ordinary trade of wholesale or retail distribution regard is to be had to the extent to which it has the following features—
  - (a) the goods are bought by the trader in quantities larger than those in which the trader sells them,
  - (b) the goods are bought and sold by the trader in different markets,
  - (c) the trader employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, in addition to any remuneration paid to any person connected with it,
  - (d) there are purchases or sales from or to persons who are connected with the trader,
  - (e) purchases are matched with forward sales or vice versa,
  - (f) the goods are held by the trader for longer than is normal for goods of the kind in question,
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade, and
  - (h) the trader does not take physical possession of the goods.
- (7) In subsection (6)—
  - (a) the features in paragraphs (a) to (c) are regarded as indications that the trade is an ordinary trade of wholesale or retail distribution, and

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- (b) those in paragraphs (d) to (h) are regarded as indications to the contrary.

### **305 Excluded activities: leasing of ships**

- (1) This section supplements section 303(1)(d) so far as it relates to the leasing of ships other than offshore installations or pleasure craft.
- (2) In the following provisions “ship” accordingly means a ship other than an offshore installation or a pleasure craft.
- (3) If the requirements of subsection (4) are met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(d) as a result only of its consisting in letting ships on charter.
- (4) The requirements of this subsection are that—
  - (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company,
  - (b) every ship beneficially owned by the company is registered in the United Kingdom,
  - (c) the company is solely responsible for arranging the marketing of the services of its ships, and
  - (d) the conditions mentioned in subsection (5) are met in relation to every letting on charter by the company.
- (5) The conditions referred to in subsection (4)(d) are—
  - (a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer,
  - (b) no provision for the grant of a new letting to end more than 12 months after the provision is made (whether in the charterparty or otherwise) is in force during the period of the letting otherwise than at the option of the charterer,
  - (c) the letting is by way of a bargain at arm's length between the company and a person who is not connected with it,
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry, and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period, and
  - (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.
- (6) If in the case of the company carrying on the trade (“the letting company”) the charterer is also a company and—
  - (a) the charterer is a qualifying subsidiary of the letting company, or
  - (b) the letting company is a qualifying subsidiary of the charterer, or
  - (c) both companies are qualifying subsidiaries of a third company,subsection (5) has effect with the omission of paragraph (c).

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- (7) If any of the requirements of subsection (4) is not met in relation to any lettings of ships, the trade is not, as a result, to be treated as consisting in the carrying on of excluded activities if—
- (a) those lettings, and
  - (b) any other excluded activities
- do not, taken together, amount to a substantial part of the trade.
- (8) In this section “pleasure craft” means any ship of a kind primarily used for sport or recreation.

### **306 Excluded activities: receipt of royalties and licence fees**

- (1) This section supplements section 303(1)(e) (receipt of royalties and licence fees).
- (2) If the requirement of subsection (3) is met, a trade is not to be regarded as consisting in the carrying on of excluded activities within section 303(1)(e) as a result only of its consisting to a substantial extent in the receiving of royalties or licence fees.
- (3) The requirement of this subsection is that the royalties or licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.
- (4) For this purpose an intangible asset is a “relevant intangible asset” if the whole or greater part (in terms of value) of it has been created—
- [<sup>F84</sup>(a) by the relevant company, or]
  - [<sup>F84</sup>(b) by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.]
- (5) In the case of an intangible asset that is intellectual property, references to the creation of an asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).
- (6) In this section—
- <sup>F85</sup> ...
- “intangible asset” means any asset which falls to be treated as an intangible asset in accordance with generally accepted accountancy practice, and
- “intellectual property” means—
- (a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right, or
  - (b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).
- [<sup>F86</sup>(7) If—
- (a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and
  - (b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,
- references in subsection (4) to the relevant company include the old company.]

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#### Textual Amendments

- F84** S. 306(4)(a)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(2\), 13](#)
- F85** Words in s. 306(6) repealed (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(3\), 13](#), [Sch. 27 Pt. 2\(16\)](#)
- F86** S. 306(7) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 12\(4\), 13](#)

### 307 Excluded activities: property development

- (1) This section supplements section 303(1)(g).
- (2) “Property development” means the development of land—
  - (a) by a company which has, or at any time has had, an interest in the land, and
  - (b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.
- (3) For this purpose “interest in land” means, subject to subsection (4)—
  - (a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or
  - (b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.
- (4) References in this section to an interest in land do not include—
  - (a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

#### <sup>F87</sup> 307A Excluded activities: shipbuilding

In section 303(1)(ia) “shipbuilding” has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

#### Textual Amendments

- F87** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### 307B Excluded activities: producing coal

- (1) This section supplements section 303(1)(ib).
- (2) “Coal” has the meaning given by Article 2 of Council Regulation ([EC](#)) No. 1407/2002 (state aid to coal industry).
- (3) The production of coal includes the extraction of it.

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#### Textual Amendments

**F87** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### 307C Excluded activities: producing steel

In section 303(1)(ic) “steel” means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.]

#### Textual Amendments

**F87** Ss. 307A-307C inserted (retrospective to 6.4.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 11 paras. 9, 10](#) (with [Sch. 11 paras. 12, 13](#))

### 308 Excluded activities: hotels and comparable establishments

- (1) This section supplements section 303(1)(j).
- (2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).
- (3) The activities of a person are not to be taken to fall within section 303(1)(j) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

### 309 Excluded activities: nursing homes and residential care homes

- (1) This section supplements section 303(1)(k).
- (2) “Nursing home” means any establishment which exists wholly or mainly for the provision of nursing care—
  - (a) for persons suffering from sickness, injury or infirmity, or
  - (b) for women who are pregnant or have given birth.
- (3) “Residential care home” means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care because of—
  - (a) old age,
  - (b) mental or physical disability,
  - (c) past or present dependence on alcohol or drugs,
  - (d) any past illnesses, or
  - (e) past or present mental disorder.
- (4) The activities of a person are not to be taken to fall within section 303(1)(k) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

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### **310 Excluded activities: provision of services or facilities for another business**

- (1) Providing services or facilities for a business carried on by another person (other than a company of which the provider of the services or facilities is a qualifying subsidiary) is an excluded activity if—
  - (a) the business consists wholly or as to a substantial part of activities falling within any of paragraphs (a) to (k) of section 303(1), and
  - (b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the provider of the services or facilities.
- (2) Subsections (3) to (5) explain what is meant by a controlling interest in a business for the purposes of subsection (1)(b).
- (3) In the case of a business carried on by a company, a person (“A”) has a controlling interest in the business if—
  - (a) A controls the company,
  - (b) the company is a close company and A or an associate of A, being a director of the company, either—
    - (i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or
    - (ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital, or
  - (c) at least half the business could, in accordance with section 344(2) of ICTA (persons to whom company's trade may be treated as belonging), be regarded as belonging to A for the purposes of section 343 of that Act (company reconstructions without a change of ownership).
- (4) In any other case, a person has a controlling interest in a business if the person is entitled to at least half the assets used for, or of the income arising from, the business.
- (5) For the purposes of this section—
  - (a) any rights or powers of a person who is an associate of another are to be attributed to that other person, and
  - (b) “business” includes any trade, profession or vocation.

### *Supplementary*

### **311 Power to amend Chapter**

The Treasury may by order amend this Chapter—

- (a) to make such modifications of sections 290, 291, 298 and 300, sections 303 to 310 and section 313(3) as they consider appropriate, and
- (b) to substitute different sums for the sums of money for the time being specified in sections 287(2) and 297.

### **312 Winding up of the relevant company**

None of the requirements of this Chapter is to be regarded, at a time when the relevant company is being wound up, as being, on that account, a requirement that is not met in relation to that company if—

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- (a) the requirements of this Chapter would be met in relation to that company apart from the winding up, and
- (b) the winding up is for genuine 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.

### 313 Interpretation of Chapter

- (1) In this Chapter —
  - “the investing company” has the meaning given by section 286(1),
  - “the relevant company” has the meaning given by section 286(1), and
  - “the relevant holding” has the meaning given by section 286(1).
- (2) References in this Chapter to the issue of any securities, in relation to any security consisting in a liability in respect of an unsecured loan, have effect as references to the making of the loan.
- (3) References in sections 303 to 309 to a trade are to be read without regard to the definition of “trade” in section 989 (see also section 300(4)).
- (4) For the purposes of sections 296 and 310(3) and (4), the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA with the modification given by subsection (6).
- (5) For the purposes of this Chapter, section 993 (meaning of “connected persons”) applies as if references to “control” in that section were to be read in accordance with section 416 of ICTA with the modification given by subsection (6).
- (6) The modification is that, in determining whether a person controls a company, the following are to be ignored—
  - (a) any person's possession of, or entitlement to acquire, fixed-rate preference shares in the company that do not carry voting rights, and
  - (b) any person's possession of, or entitlement to acquire, rights as a loan creditor of the company.
- (7) In subsection (6) “fixed-rate preference shares” means shares which—
  - (a) were issued wholly for new consideration,
  - (b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities, and
  - (c) do not carry any right to dividends other than dividends which—
    - (i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
    - (ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued,
 and in paragraph (a) “new consideration” has the meaning given by section 254 of ICTA.



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## CHAPTER 5

### POWERS: WINDING UP AND MERGERS OF VCTs

#### *Winding up*

#### **314 Power to treat VCT-in-liquidation as VCT**

- (1) Regulations may make provision for tax enactments specified by the regulations to have effect as if—
  - (a) a VCT-in-liquidation that is not a VCT were, or were during any prescribed period of its winding up, a VCT,
  - (b) VCT approval withdrawn from a company—
    - (i) at any time during the period when it is a VCT-in-liquidation, or
    - (ii) at any time during a prescribed part of that period,were withdrawn at a prescribed time (and not at the time when it is actually withdrawn).
- (2) In this section “prescribed” means specified by, or determined under, regulations.

#### **315 Power to treat conditions for VCT approval as met with respect to VCT-in-liquidation**

- (1) Regulations may make provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated for the purposes of section 274(1) as met, or as conditions that will be met, with respect to a VCT-in-liquidation.
- (2) Provision under subsection (1) may be made so as to apply in relation to a VCT-in-liquidation—
  - (a) throughout its winding up, or
  - (b) during prescribed periods of its winding up.
- (3) Regulations may, for purposes of tax enactments specified by the regulations, make provision for VCT approval to be treated as having been withdrawn, with effect from a time specified by or determined under the regulations, from a VCT-in-liquidation from which the Commissioners for Her Majesty's Revenue and Customs would have power to withdraw such approval but for provision made under subsection (1).

#### **316 Power to make provision about distributions by VCT-in-liquidation**

- (1) Regulations may make provision for tax enactments specified by the regulations—
  - (a) to apply in relation to distributions from a VCT-in-liquidation (including, in particular, distributions in the course of dissolving it or winding it up),
  - (b) not to apply in relation to such distributions,
  - (c) to apply in relation to such distributions with modifications specified by the regulations.
- (2) Provision under subsection (1) may be made so as to apply in relation to distributions from a VCT-in-liquidation made—
  - (a) at any time during its winding up, or

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- (b) during periods of its winding up specified by, or determined under, regulations.

### **317 Power to facilitate disposal to VCT by VCT-in-liquidation**

- (1) Regulations may make provision authorised by subsection (2) for cases where shares in or securities of a company are acquired by a VCT from a VCT-in-liquidation.
- (2) The provision that may be made under subsection (1) for such a case is—
  - (a) provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated for the purposes of section 274(1) as met, or as conditions that will be met, with respect to the VCT in relation to periods ending after the acquisition,
  - (b) provision for the shares or securities acquired to be treated, at times after the acquisition when they are held by the VCT, as meeting the requirements of Chapter 4 (provisions for determining whether shares or securities form part of qualifying holdings), and
  - (c) provision for shares in the VCT issued in connection with the acquisition of the shares or securities from the VCT-in-liquidation and either—
    - (i) issued to a person who is a member of the VCT-in-liquidation, or
    - (ii) issued to the VCT-in-liquidation and distributed by it in the course of its winding up or dissolution to a person who is one of its members,
 to be treated, for the purposes of Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment), as representing shares in the VCT-in-liquidation held by that person.
- (3) Provision under subsection (1) may be made so as to apply in relation to shares or securities acquired from a VCT-in-liquidation—
  - (a) at any time during its winding up, or
  - (b) during periods of its winding up specified by, or determined under, regulations.
- (4) In this section “securities” means any securities and includes any liability that is a security in relation to a company because of section 285(2) (securities).

### **318 Power in respect of periods before and after winding up**

- (1) Any power under sections 314 to 317 to make provision in relation to a VCT-in-liquidation includes power to make corresponding or similar provision in relation to—
  - (a) a company for whose winding up an application has been made to a court and which is not a VCT-in-liquidation but would be if, at the time that the application was made, the court had ordered the company's winding up to commence at that time, or
  - (b) a company that has been a VCT-in-liquidation but no longer is a VCT-in-liquidation because it has been wound up.
- (2) For the purposes of making provision in reliance on subsection (1), references in sections 314 to 317 (however expressed) to a VCT-in-liquidation's winding up, or the commencement or ending of its winding up, may be taken to be references to, or to the commencement or ending of, the extension period for a company to which subsection (1) applies.

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(3) In this section—

“the extension period”—

- (a) in relation to a company to which subsection (1)(a) applies, means the period beginning with the making of the application and ending with the earlier of its final determination and the company becoming a company that is being wound up, and
- (b) in relation to a company to which subsection (1)(b) applies, means the period between the end of the company's winding up and the company's dissolution, and

“prescribed” means specified by, or determined under, regulations.

### **319 Sections 314 to 318: supplementary**

- (1) Provision made by regulations under sections 314 to 318 applies in cases, and subject to conditions, specified by regulations.
- (2) Such provision may (but need not) be made so as to have effect in a particular case only for such period as may be specified by, or determined under, regulations.
- (3) References in sections 314 to 318 to things done by a VCT-in-liquidation include things done by a liquidator of a VCT-in-liquidation.

### **320 Meaning of “VCT-in-liquidation”**

- (1) In this Chapter “VCT-in-liquidation” means a company—
  - (a) that is being wound up (whether or not under the law of a part of the United Kingdom and whether under the law of one, or more than one, territory),
  - (b) that was a VCT immediately before the commencement of its winding up, and
  - (c) whose winding up is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (2) Regulations may, for purposes of this Chapter, make provision as to when a company's winding up is to be treated as commencing or ending in a case where it is wound up otherwise than under the law of a part of the United Kingdom or otherwise than under the law of a single territory.

## *Mergers*

### **321 Power to facilitate mergers of VCTs**

- (1) Regulations may make provision authorised by section 322 for cases where—
  - (a) there is a merger of two or more companies each of which is a VCT immediately before the merger begins to be effected, and
  - (b) the merger is for genuine commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.
- (2) Provision made by regulations under subsection (1) applies—
  - (a) in cases, and

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(b) subject to conditions (including conditions requiring approvals to be obtained),  
 specified by the regulations.

### **322 Provision that may be made by regulations under section 321**

- (1) The provision that may be made under section 321(1) for a case where there is a merger of two or more companies (“the merging companies”) is as follows.
- (2) Provision for the successor company, or any of the merging companies, to be treated (whether at times before, during or after the merger) as a VCT for purposes of tax enactments specified by regulations.
- (3) Provision for section 266 (loss of relief on disposal of VCT shares within 5 years of their issue) not to apply in the case of disposals of shares in a merging company made in the course of effecting the merger.
- (4) Provision for such disposals not to be chargeable events for the purposes of Schedule 5C to TCGA 1992 (VCTs: deferred charge on re-investment).
- (5) Provision for conditions mentioned in section 274(2) (conditions for approval as a VCT) to be treated (whether at times before, during or after the merger) for purposes of section 274(1) as met, or as conditions that will be met, with respect to the successor company or any of the merging companies.
- (6) Provision for shares in or securities of a company that are acquired (whether at times before, during or after the merger) by the successor company from a merging company to be treated, at times after the acquisition when they are held by the successor company, as meeting requirements of Chapter 4 (provisions for determining whether shares or securities held by a VCT form part of its qualifying holdings).
- (7) Provision for tax enactments specified by regulations to apply, with or without adaptations, in relation to the merger or transactions taking place (whether before, during or after the merger) in connection with the merger.
- (8) Provision authorising disclosure for tax purposes connected with the merger—
  - (a) by Her Majesty's Revenue and Customs,
  - (b) to any of the merging companies or the successor company,
  - (c) of any information provided to Her Majesty's Revenue and Customs by or on behalf of any of the merging companies or the successor company.

### **323 Meaning of “merger” and “successor company”**

- (1) For the purposes of this Chapter there is a merger of two or more companies (“the merging companies”) if—
  - (a) shares in one of the merging companies (“company A”) are issued to members of the other merging company or companies, and
  - (b) the shares issued to members of the other merging company or, in the case of each of the other merging companies, the shares issued to members of that other company, are issued—
    - (i) in exchange for their shares in that other company, or
    - (ii) by way of consideration for a transfer to company A of the whole or part of the business of that other company.

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- (2) For the purposes of this Chapter there is also a merger of two or more companies (“the merging companies”) if—
- (a) shares in a company (“company B”) that is not one of the merging companies are issued to members of the merging companies, and
  - (b) in the case of each of the merging companies, the shares issued to members of that company are issued—
    - (i) in exchange for their shares in that company, or
    - (ii) by way of consideration for a transfer to company B of the whole or part of the business of that company.
- (3) In this Chapter “the successor company”—
- (a) in relation to a merger such as is described in subsection (1), means the company that performs the role of company A, and
  - (b) in relation to a merger such as is described in subsection (2), means the company that performs the role of company B.

### *Supplementary*

## **324 Regulations under Chapter**

- (1) Regulations under this Chapter may—
- (a) contain such administrative provisions (including provision for advance clearance and provision for the withdrawal of clearances) as appear to the Treasury to be necessary or appropriate,
  - (b) authorise the Commissioners for Her Majesty's Revenue and Customs to give notice to any person requiring that person to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by regulations under this Chapter are met,
  - (c) make different provision for different cases,
  - (d) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (e) include provision having retrospective effect.
- (2) Without prejudice to any specific provision of this Chapter, a power conferred by any provision of this Chapter to make regulations includes power to provide for Her Majesty's Revenue and Customs to exercise a discretion in dealing with any matter.

## **325 Interpretation of Chapter**

In this Chapter—

“regulations” means regulations made by the Treasury, and

“tax enactments” means provisions of or made under—

- (a) the Tax Acts,
- (b) TCGA 1992 or any other enactment relating to capital gains tax, or
- (c) TMA 1970.

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## CHAPTER 6

### SUPPLEMENTARY AND GENERAL

#### *Acquisitions for restructuring purposes*

### **326 Restructuring to which section 327 applies**

- (1) Section 327 applies if—
  - (a) arrangements are made for a company (“the new company”) to acquire all the shares (“old shares”) in another company (“the old company”),
  - (b) the acquisition provided for by the arrangements falls within subsection (2), and
  - (c) the Commissioners for Her Majesty's Revenue and Customs have, before any exchange of shares takes place under the arrangements, given an approval notification.
- (2) An acquisition of shares falls within this subsection if—
  - (a) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - (b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than subscriber shares and new shares previously issued in consideration of old shares,
  - (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description, and
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.
- (3) For the purposes of subsection (1)(c) an approval notification is one which, on the application of either the old company or the new company, is given to the applicant company and states that the Commissioners for Her Majesty's Revenue and Customs are satisfied that the exchange of shares under the arrangements—
  - (a) will be effected for genuine commercial reasons, and
  - (b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of TCGA 1992 (schemes with avoidance purposes).
- (4) Nothing in section 327 treats any of the requirements of Chapter 4 as being met in relation to any new shares unless the matching old shares were first issued to the company holding them and have been held by that company from the time when they were issued until they are acquired by the new company.
- (5) If, at any time after the arrangements first came into existence and before the new company acquired all the old shares, the arrangements—
  - (a) cease to be arrangements for the acquisition of all the old shares by the new company, or
  - (b) cease to be arrangements for an acquisition falling within subsection (2),
 section 327 does not treat any requirement of Chapter 4 as being met, and subsection (8) of that section does not apply, in the case of any new shares at any time after the arrangements have so ceased.

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### **327 Certain requirements of Chapter 4 to be treated as met**

- (1) If this section applies, subsections (2) to (8) have effect to determine the extent to which, and the times for which, the requirements of the following provisions of Chapter 4 are met in relation to the new shares—
- section 287 (the maximum qualifying investment requirement),
  - section 289 (the proportion of eligible shares requirement),
  - section 290 (the trading requirement),
  - section 291 (the carrying on of a qualifying activity requirement),
  - section 293 (the use of the money raised requirement),
  - section 294 (the relevant company to carry on the relevant qualifying activity requirement),
  - section 296 (the control and independence requirement),<sup>F88</sup>...
  - section 297 (the gross assets requirement)<sup>F89</sup>, and
  - section 297A (the number of employees requirement). ]
- (2) If the requirements of sections 290 and 291 were met in relation to the old company and any old shares immediately before the beginning of the period for giving effect to the arrangements, then (so far as it would not otherwise be the case) those requirements are treated as being met in relation to the new company and the matching new shares at all times which—
- (a) fall in that period, and
  - (b) do not fall after a time when (apart from the arrangements) those requirements would have ceased by virtue of—
    - (i) section 291(4) or (5), or
    - (ii) any cessation of a trade by any company,to be met in relation to the old company and the matching old shares.
- (3) For the purposes of section 291, the period of two years mentioned in subsection (4) of that section is treated, in the case of any new shares, as expiring at the same time as it would have expired (or by virtue of this subsection would have been treated as expiring) in the case of the matching old shares.
- (4) Subject to subsection (5), if—
- (a) there is an exchange under the arrangements of any new shares for any old shares, and
  - (b) those old shares are shares in relation to which the requirements of sections 293, 294<sup>F90</sup>, 297 and 297A] were (or were treated as being) met to any extent immediately before the exchange,
- those requirements are to be treated, at all times after that time, as met to the same extent in relation to the matching new shares.
- (5) If there is a time following any exchange under the arrangements of any new shares for any old shares when (apart from the arrangements) the requirement of section 293 would have ceased under—
- (a) subsection (1) of that section, or
  - (b) this subsection,
- to be met in relation to those old shares, that requirement ceases at that time to be met in relation to the matching new shares.

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- (6) For the purposes of section 287, any new shares acquired under the arrangements are to be treated as representing an investment which—
- (a) raised the same amount of money as was raised (or, by virtue of this subsection, is treated as having been raised) by the issue of the matching old shares, and
  - (b) raised that amount by an issue of shares in the new company made at the time when the issue of the matching old shares took place (or, as the case may be, is treated as having taken place).
- (7) In determining whether the requirements of section 296 are met in relation to the old company or the new company at a time in the period for giving effect to the arrangements, ignore both—
- (a) the arrangements themselves, and
  - (b) any exchange of new shares for old shares that has already taken place under the arrangements.
- (8) For the purposes of section 289, the value of the new shares, both—
- (a) immediately after the time of their acquisition, and
  - (b) immediately after the time of any subsequent relevant event occurring by virtue of the arrangements,
- is to be taken to be the same as the value, when last valued in accordance with that section, of the old shares for which they are exchanged.

#### Textual Amendments

- F88** Word in s. 327(1) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(16\)](#)
- F89** Words in s. 327(1) inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(4\)\(a\)](#), (5) (with [Sch. 16 para. 3\(6\)\(7\)](#))
- F90** Words in s. 327(4)(b) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 3\(4\)\(b\)\(5\)](#) (with [Sch. 16 para. 3\(6\)\(7\)](#))

## 328 Supplementary

- (1) Subject to subsection (2), references in sections 326 and 327 and this section, except in the expression “subscriber shares”, to shares in a company include references to any securities of that company.
- (2) For the purposes of subsection (1) a relevant security of the old company is not to be treated as a security of the old company if—
- (a) the arrangements do not provide for the acquisition of the security by the new company, or
  - (b) such treatment prevents section 326(1)(b) from being met in connection with the arrangements.
- (3) In subsection (2) “relevant security” means an instrument which is a security for the purposes of Chapter 4 merely because of section 285(2).
- (4) References in section 327 to the period for giving effect to the arrangements are references to the period which—
- (a) begins with the time when the arrangements first came into existence, and



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- (b) ends with the time when the new company completes its acquisition under the arrangements of all the old shares.
- (5) For the purposes of sections 326 and 327 and this section—
  - (a) old shares and new shares are of a corresponding description if, were they shares in the same company, they would be of the same description, and
  - (b) old shares and new shares are matching shares in relation to each other if the old shares are the shares for which the new shares are exchanged under the arrangements.

### *Conversion of shares etc and company reorganisations*

## **329 Conversion of convertible shares and securities**

- (1) This section applies if—
  - (a) shares have been issued to a company (“the investing company”) by the exercise by it of any right of conversion attached to other shares or securities held by it (“the convertibles”),
  - (b) the shares so issued are in the same company as the convertibles to which the right was attached,
  - (c) the convertibles to which the right was attached were first issued to the investing company and were held by it from the time they were issued until converted, and
  - (d) the right was attached to the convertibles when they were first so issued and was not varied before it was exercised.
- (2) If this section applies, subsections (3) and (4) have effect to determine the extent to which, and the times for which, the requirements of the following provisions of Chapter 4 are met in relation to the shares issued to the investing company by the exercise by it of the right of conversion—
  - section 287 (the maximum qualifying investment requirement),
  - section 289 (the proportion of eligible shares requirement),
  - section 291 (the carrying on of a qualifying activity requirement),
  - section 293 (the use of the money raised requirement),
  - section 294 (the relevant company to carry on the relevant qualifying activity requirement), and
  - section 297 (the gross assets requirement).
- (3) Subsections (3) to (6) of section 327 apply in relation to the exchange of convertibles for shares by virtue of the exercise of the right of conversion as if—
  - (a) that exchange were an exchange, under any arrangements to which that section applies, of new shares for old shares, and
  - (b) the references in those subsections and section 328(5)(b) to the arrangements were references to the provision conferring the right of conversion.
- (4) For the purposes of section 289 the value of the new shares immediately after the time of their acquisition by the investing company is to be taken as the same as the value, when last valued in accordance with that section, of the convertibles for which they are exchanged.

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### **330 Power to facilitate company reorganisations etc involving exchange of shares**

- (1) The Treasury may by regulations make provision for cases where—
  - (a) a holding of shares or securities that meets the requirements of Chapter 4 is exchanged for other shares or securities,
  - (b) the exchange is made for genuine commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
  - (c) the new shares or securities do not meet some or all of the requirements of Chapter 4,
 providing that the new shares or securities are to be treated as meeting those requirements.
- (2) The references in subsection (1) to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares in or securities of a company receiving other shares or securities—
  - (a) whether the original shares or securities are transferred, cancelled or retained, and
  - (b) whether the new shares or securities are in or of the same or another company.
- (3) The regulations must specify—
  - (a) the cases in which, and conditions subject to which, they apply,
  - (b) which requirements of Chapter 4 are to be treated as met, and
  - (c) the period for which those requirements are to be treated as met.
- (4) The regulations may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or appropriate.
- (5) The regulations may authorise the Commissioners for Her Majesty's Revenue and Customs to give notice to any person requiring that person to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by the regulations are met.
- (6) Regulations under this section —
  - (a) may make different provision for different cases,
  - (b) may contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) may include provision having retrospective effect.

#### *Supplementary*

### **331 Meaning of a company being “in administration” or “in receivership”**

- (1) References in this Part to a company being “in administration” or “in receivership” are to be read as follows.
- (2) A company is “in administration” if—
  - (a) it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986 (c. 45) or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or

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- (b) there is in force in relation to it under the law of a country or territory outside the United Kingdom any appointment corresponding to an appointment of an administrator under either of those Schedules.
- (3) A company is “in receivership” if there is in force in relation to it—
  - (a) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter 1 or 2 of Part 3 of the Insolvency Act 1986 or Part 4 of the Insolvency (Northern Ireland) Order 1989, or
  - (b) any corresponding order under the law of a country or territory outside the United Kingdom.

### 332 Minor definitions etc

In this Part—

- “associate” has the meaning given by section 253,
- “company” includes any body corporate or unincorporated association but does not include a partnership, and is to be read in accordance with section 99 of TCGA 1992 (unit trust schemes),
- “director” is read in accordance with section 417(5) of ICTA,
- “group” means a parent company and its qualifying subsidiaries,
- “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
- “ordinary shares” means shares forming part of a company's ordinary share capital,
- “parent company” means a company that has one or more qualifying subsidiaries and “single company” means a company that does not,
- “research and development” has the meaning given by section 1006, and
- “shares” includes stock.

## PART 7

### COMMUNITY INVESTMENT TAX RELIEF

## CHAPTER 1

### INTRODUCTION

#### CITR

### 333 Meaning of “CITR”

This Part provides for community investment tax relief (“CITR”), that is, entitlement to tax reductions in respect of amounts invested by individuals in community development finance institutions.

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### 334 Eligibility for CITR

- (1) An individual (“the investor”) who makes an investment (“the investment”) in a body is eligible for CITR in respect of the investment if—
  - (a) that body is accredited as a community development finance institution under Chapter 2 at the time the investment is made,
  - (b) the investment is a qualifying investment (see Chapter 3), and
  - (c) the general conditions of Chapter 4 are met.
- (2) In this Part references to “the CDFI” are to the body in which the investment is made.

### 335 Form and amount of CITR

- (1) If the investor is eligible for CITR in respect of the investment, the investor may make a claim in respect of the investment for any one or more of the relevant tax years.
- (2) If the investor makes a claim for a relevant tax year, the investor is entitled to a tax reduction for that year of 5% of the invested amount in respect of the investment for the year.
- (3) For this purpose the “relevant” tax years are—
  - (a) the tax year in which the investment date falls, and
  - (b) each of the 4 subsequent tax years.
- (4) The tax reduction is given effect at Step 6 of the calculation in section 23.
- (5) The investor is entitled to make a claim for CITR for a relevant tax year if—
  - (a) the investor considers that the conditions for the CITR are for the time being met, and
  - (b) the investor has received a tax relief certificate (see section 348) relating to the investment from the CDFI,
 but no claim may be made before the end of the tax year to which it relates.
- (6) Subsection (5) is subject to the following provisions—
  - (a) section 354 (loans: no claim after disposal or excessive repayments or receipts of value),
  - (b) section 355 (securities or shares: no claim after disposal or excessive receipts of value), and
  - (c) section 356 (no claim after loss of accreditation by CDFI).

### *Miscellaneous*

### 336 Meaning of “making an investment”

- (1) For the purposes of this Part, an individual makes an investment in a body at any time when—
  - (a) the individual makes a loan (whether secured or unsecured) to the body, or
  - (b) an issue of securities of or shares in the body, for which the individual has subscribed, is made to the individual.
- (2) The following provisions of this section apply for the purposes of subsection (1)(a).
- (3) An individual does not make a loan to a body if—

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- (a) the body uses overdraft facilities provided by the individual, or
  - (b) the individual subscribes for or otherwise acquires securities of the body.
- (4) If the loan agreement authorises the body to draw down amounts of the loan over a period of time, the loan is treated as made at the time when the first amount is drawn down.

### **337 Determination of “the invested amount”**

- (1) This section applies for the purpose of determining “the invested amount” in respect of any loan, securities or shares included in the investment.

This is subject to sections 363(2) and 369 (which adjust “the invested amount” in certain cases where value is received).

- (2) In the case of a loan, the invested amount is—
- (a) for the tax year in which the investment date falls, the average capital balance for the first year of the 5 year period,
  - (b) for the next tax year, the average capital balance for the second year of the 5 year period, and
  - (c) for any subsequent tax year—
    - (i) the average capital balance for the period of 12 months beginning with the anniversary of the investment date falling in the tax year concerned, or
    - (ii) if less, the average capital balance for the period of 6 months beginning 18 months after the investment date.
- (3) In the case of securities or shares, the invested amount for a tax year is the amount subscribed by the investor for the securities or shares.
- (4) For the purposes of this section, the average capital balance of the loan for a period is the mean of the daily balances of capital outstanding during the period.

### **338 Meaning of “the 5 year period” and “the investment date”**

In this Part—

“the 5 year period” means the period of 5 years beginning with the investment date, and

“the investment date” means the day the investment is made.

### **339 Overview of other Chapters of Part**

In this Part—

- (a) Chapter 5 provides for the making of claims for CITR and the attribution of CITR to investments,
- (b) Chapter 6 provides for CITR to be withdrawn or reduced in the circumstances mentioned in that Chapter, and
- (c) Chapter 7 contains supplementary and general provision.

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## CHAPTER 2

### ACCREDITED COMMUNITY DEVELOPMENT FINANCE INSTITUTIONS

#### 340 Application and criteria for accreditation

- (1) Applications for accreditation as a community development finance institution must be made to the Secretary of State in the form and manner specified by the Secretary of State.
- (2) The Secretary of State is to accredit a body if (and only if) the Secretary of State is satisfied—
  - (a) that the body's principal objective is to provide (directly or indirectly)—
    - (i) finance, or
    - (ii) finance and access to business advice,
 for enterprises for disadvantaged communities, and
  - (b) that the body meets any other criteria specified in regulations made by the Treasury.
- (3) For the purposes of this section “enterprises for disadvantaged communities” include—
  - (a) enterprises located in disadvantaged areas, and
  - (b) enterprises owned or operated by, or designed to serve, members of disadvantaged groups.
- (4) The criteria mentioned in paragraph (b) of subsection (2) may include criteria relating to the enterprises to which the body provides or proposes to provide finance or access to business advice.
- (5) Regulations under that paragraph may make the provision authorised by that paragraph by reference to any material published by, or on behalf of, the Secretary of State (whether before or after the coming into force of this section).
- (6) Regulations under that paragraph—
  - (a) may make different provision for different cases or circumstances or in relation to different areas, and
  - (b) may, in particular, make different provision in the case of bodies whose principal objective in providing finance as mentioned in subsection (2)(a) is to invest directly in enterprises that meet the conditions of subsection (7).
- (7) An enterprise meets the conditions of this subsection if it uses the money invested in it for the purposes of its business and either—
  - (a) that business does not include the provision of finance for other enterprises, or
  - (b) if it does, the nature and extent of such provision meets any conditions prescribed by regulations made by the Treasury.
- (8) If the Secretary of State accredits a body of a kind mentioned in subsection (6)(b), the Secretary of State must specify in the accreditation that the body is accredited as a retail community development finance institution.

#### 341 Terms and conditions of accreditation

- (1) An accreditation under this Chapter must—

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- (a) be made on—
    - (i) any terms required by regulations, and
    - (ii) any other terms the Secretary of State considers appropriate, and
  - (b) be made conditional on compliance with—
    - (i) any requirements imposed by regulations, and
    - (ii) any other requirements the Secretary of State considers appropriate.
- (2) The requirements that may be imposed by virtue of subsection (1)(b) include requirements relating to the provision of information.
- (3) Regulations may—
- (a) make provision for appeals to the Special Commissioners against refusals to grant accreditation under this Chapter,
  - (b) make provision about the consequences of a failure to comply with any requirement of an accreditation, including—
    - (i) provision for the withdrawal of the accreditation with effect from the time of the failure or a later time, and
    - (ii) provision for the imposition of penalties,
  - (c) make provision for the making of decisions by the Secretary of State as to any matter required to be decided for the purposes of the regulations,
  - (d) make different provision for different cases or circumstances or in relation to different areas, and
  - (e) contain incidental, supplemental, consequential and transitional provision and savings.
- (4) In this section “regulations” means regulations made by the Treasury.

### **342 Period of accreditation**

- (1) An accreditation has effect for a period (an “accreditation period”) of 3 years beginning on the day specified in the accreditation.
- (2) Subject to subsection (4), the accreditation must not specify a day which is earlier than—
  - (a) if the body is not accredited under this Chapter at the time the application is made, the day the accreditation is granted, and
  - (b) if the body is so accredited, the time the body's current accreditation expires.
- (3) Subsection (4) applies if—
  - (a) the body is accredited at the time the application is made, and
  - (b) it makes a request under this subsection.
- (4) The new accreditation may specify that the existing accreditation is to be treated for the purposes of this Part (including subsection (2)(b)) as expiring immediately before the grant of the new accreditation (if it would otherwise expire at a later time).
- (5) This section has effect subject to section 341(3)(b) (power to provide for the withdrawal of accreditation).

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### 343 Delegation of Secretary of State's functions

The Secretary of State may delegate any functions conferred on the Secretary of State by or under this Chapter.

## CHAPTER 3

### QUALIFYING INVESTMENTS

### 344 Qualifying investments: introduction

For the purposes of this Part the investment is a “qualifying investment” in the CDFI if—

- (a) the investment consists of—
  - (i) a loan in relation to which the conditions of section 345 are met,
  - (ii) securities in relation to which the conditions of section 346 are met, or
  - (iii) shares in relation to which the conditions of section 347 are met,
- (b) the investor receives from the CDFI a valid tax relief certificate in relation to the investment (see section 348), and
- (c) the requirements of section 349 (no pre-arranged protection against risks) are met.

### 345 Conditions to be met in relation to loans

- (1) Condition A of this section is that either—
  - (a) the CDFI receives from the investor, on the investment date, the full amount of the loan, or
  - (b) if the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the end of that period is not later than 18 months after the investment date.
- (2) Condition B is that the loan must not carry any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within the 5 year period.
- (3) Condition C is that the loan must not have been made on terms that allow any person to require—
  - (a) the repayment during the first two years of the 5 year period of any of the loan capital advanced in those two years,
  - (b) the repayment during the third year of that period of more than 25% of the loan capital outstanding at the end of those two years,
  - (c) the repayment before the end of the fourth year of that period of more than 50% of that loan capital, or
  - (d) the repayment before the end of that period of more than 75% of that loan capital.
- (4) Subsection (3) does not apply if the CDFI is required to make the repayment as a result of its failure to meet any obligation of the loan agreement which—
  - (a) is imposed merely because of the commercial risks to which the investor is exposed as lender under that agreement, and



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- (b) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Part.
- (5) The Treasury may by order substitute any other percentage for any percentage for the time being specified in subsection (3).
- (6) Any such substitution is to have effect in relation to loans made by an individual on or after the date specified in the order.

### **346 Conditions to be met in relation to securities**

- (1) Condition A of this section is that the securities must be—
  - (a) subscribed for wholly in cash, and
  - (b) fully paid for on the investment date.
- (2) Condition B is that the securities must not carry—
  - (a) any present or future right to be redeemed within the 5 year period, or
  - (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.
- (3) Securities are not fully paid for the purposes of subsection (1)(b) if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the securities.

### **347 Conditions to be met in relation to shares**

- (1) Condition A of this section is that the shares must be—
  - (a) subscribed for wholly in cash, and
  - (b) fully paid up on the investment date.
- (2) Condition B is that the shares must not carry—
  - (a) any present or future right to be redeemed during the 5 year period, or
  - (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.
- (3) Shares are not fully paid up for the purposes of subsection (1)(b) if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the shares.

### **348 Tax relief certificates**

- (1) A “tax relief certificate” means a certificate issued by the CDFI in respect of the investment which is in the form specified by the Commissioners for Her Majesty's Revenue and Customs.
- (2) The CDFI must not issue tax relief certificates under this section in respect of investments made in the CDFI in an accreditation period if the total value of—
  - (a) those investments, and
  - (b) any investments to which subsection (3) applies,will exceed the limit for that period.

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- (3) This subsection applies to investments which—
  - (a) have been made in the CDFI in the accreditation period, and
  - (b) in respect of which the CDFI has issued tax relief certificates under paragraph 12 of Schedule 16 to FA 2002 (which makes in relation to corporation tax provision corresponding to that made by this section).
- (4) The limit for an accreditation period is—
  - (a) £10 million if the CDFI is accredited for the period as a retail community development finance institution (see section 340(8)), and
  - (b) £20 million in any other case.
- (5) For the purposes of subsection (2) the value of an investment made in the CDFI is—
  - (a) if the investment consists of a loan—
    - (i) the amount of the loan, or
    - (ii) if the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the amount committed under the loan agreement, and
  - (b) if the investment consists of securities or shares, the amount subscribed for them.
- (6) The Treasury may by order substitute any other amount for any amount for the time being specified in subsection (4).
- (7) Any such substitution is to have effect in relation to such accreditation periods as may be specified in the order; and those periods may, if the substitution increases the amount for the time being specified in subsection (4), include periods beginning before the order takes effect.
- (8) Any tax relief certificate issued in contravention of subsection (2) is invalid.
- (9) A body is liable to a penalty of not more than £3,000 if it issues a tax relief certificate which is made fraudulently or negligently.

### **349 No pre-arranged protection against risks**

- (1) Any arrangements—
  - (a) under which the investment is made, or
  - (b) made, before the investor makes the investment, in relation to or in connection with the making of the investment,
 must not include excluded arrangements.
- (2) For the purposes of subsection (1) “excluded arrangements”—
  - (a) means arrangements the main purpose or one of the main purposes of which is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment, but
  - (b) does not include any arrangements which are confined to the provision for the investor of any protection against those risks which might reasonably be expected to be provided for commercial reasons if the investment were made in the course of a business of banking.

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- (3) For the purposes of this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

## CHAPTER 4

### GENERAL CONDITIONS

#### **350 No control of CDFI by investor**

- (1) The investor must not control the CDFI at any time during the 5 year period.
- (2) In this section references to the investor include any person connected with the investor.
- (3) If the CDFI is a body corporate, the question whether the investor controls the CDFI is, for the purposes of this section, determined in accordance with section 995.

This is subject to subsection (6).

- (4) In any other case the investor is treated, for those purposes, as having control of the CDFI if the investor has power to secure, as a result of—
- (a) the possession of voting power in the CDFI, or
  - (b) any powers conferred by the constitution of, or any other document regulating, the CDFI,

that the affairs of the body are conducted in accordance with the investor's wishes.

This is subject to subsections (5) and (6).

- (5) If—
- (a) the CDFI is a partnership, and
  - (b) the investor is a member of that partnership,
- for the purposes of determining in accordance with this section whether the investor controls the CDFI, the other members of that partnership are not, as a result of their membership of the CDFI, treated as partners of the investor.
- (6) In determining whether the investor controls the CDFI there are attributed to the investor (so far as it would not otherwise be the case)—
- (a) any rights or powers that the investor is entitled to acquire at a future date or will, at a future date, become entitled to acquire, and
  - (b) any rights or powers which another person holds on behalf of the investor or may be required to exercise, by direction, on the investor's behalf.

#### **351 Investor must have beneficial ownership**

- (1) The investor must be the sole beneficial owner of the investment when it is made.
- (2) If the investment consists of a loan, the person beneficially entitled to repayment of the loan is treated as the beneficial owner of the loan for the purposes of this Part.

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### **352 No acquisition of share in partnership**

- (1) If the CDFI is a partnership, the investment must not consist of or include any amount of capital contributed by the investor on becoming a member of the partnership.
- (2) For this purpose the amount of capital contributed by the investor on becoming a member of the partnership includes any amount which—
  - (a) purports to be provided by the investor by way of loan capital, and
  - (b) is accounted for as partners' capital in the accounts of the partnership.

### **353 No tax avoidance purpose**

The investment must not be made as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

## **CHAPTER 5**

### CLAIMS FOR AND ATTRIBUTION OF CITR

#### *Claims*

### **354 Loans: no claim after disposal or excessive repayments or receipts of value**

- (1) If the investment consists of a loan, no claim may be made in respect of a tax year if—
  - (a) the investor disposes of the whole or any part of the loan before the qualifying date relating to that year,
  - (b) at any time after the investment is made but before that qualifying date, the amount of the capital outstanding on the loan is reduced to nil, or
  - (c) before that qualifying date, paragraphs (a) and (b) of section 362(1) (repayments of loan in 5 year period exceeding permitted limits) apply in relation to the investment (whether by virtue of section 363 (receipts of value treated as repayments) or otherwise).
- (2) For the purposes of subsection (1)(a) any repayment of the loan is to be ignored.
- (3) For the purposes of this section the qualifying date relating to a tax year is the next anniversary of the investment date to occur after the end of that year.

### **355 Securities or shares: no claim after disposal or excessive receipts of value**

- (1) If the investment consists of securities or shares, a claim made in respect of a tax year must relate only to those securities or shares held by the investor, as sole beneficial owner, continuously throughout the period—
  - (a) beginning when the investment is made, and
  - (b) ending immediately before the qualifying date relating to the tax year.
- (2) No claim for CITR may be made in relation to a tax year if before the qualifying date relating to that year paragraphs (a) to (d) of section 364(1) (receipts of value in the 5 year period exceeding permitted limits) apply in relation to the investment or any part of it.

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- (3) For the purposes of this section the qualifying date relating to a tax year is the next anniversary of the investment date to occur after the end of that year.

### **356 No claim after loss of accreditation by the CDFI**

- (1) If the CDFI ceases to be accredited under Chapter 2 with effect from a time (“the relevant time”) within the 5 year period, no claim for CITR relating to the investment may be made by the investor—
- (a) for the relevant tax year, or
  - (b) for any later tax year.
- (2) For the purposes of subsection (1) the relevant tax year is—
- (a) if the relevant time falls within the first year of the 5 year period, the tax year in which the investment date fell, and
  - (b) in any other case, the year in which fell the last anniversary of that date before the relevant time (or, if the relevant time itself falls on an anniversary of the investment date, the year in which that anniversary falls).

#### *Attribution*

### **357 Attribution: general**

- (1) In this Part references to the CITR attributable to any loan, securities or shares in respect of a tax year are read as references to the reduction which—
- (a) is made in the investor's liability to income tax for that year, and
  - (b) is attributed to that loan, or those securities or shares, in accordance with this section and section 358.

This is subject to the provisions of Chapter 6 for the withdrawal or reduction of CITR.

- (2) Subsections (3) and (4) apply if the investor's liability to income tax is reduced for a tax year under this Part.
- (3) If the reduction is obtained because of one loan, or securities or shares included in one issue, the amount of the tax reduction is attributed to that loan or those securities or shares.
- (4) If the reduction is obtained because of a loan or loans, securities or shares included in two or more investments, the reduction—
- (a) is apportioned between the loan or loans, securities or shares in each of those investments in the same proportions as the invested amounts in respect of the loan or loans, securities or shares for the year, and
  - (b) is attributed to that loan or those loans, securities or shares accordingly.
- (5) If under this section an amount of any reduction of income tax is attributed to any securities in the same issue, a proportionate part of that amount is attributed to each security.
- (6) If under this section an amount of any reduction of income tax is attributed to any shares in the same issue, a proportionate part of that amount is attributed to each of those shares.

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- (7) If CITR attributable to a loan or any securities or shares falls to be withdrawn under Chapter 6, the CITR attributable to that loan or each of those securities or shares is reduced to nil.
- (8) If CITR attributable to any securities or shares falls to be reduced under that Chapter by any amount, the CITR attributable to each of those securities or shares is reduced by a proportionate part of that amount.

### **358 Attribution: bonus shares**

- (1) This section applies if—
  - (a) corresponding bonus shares are issued to the investor in respect of any shares (“the original shares”) included in the investment, and
  - (b) the original shares have been continuously held by the investor, as sole beneficial owner, from the time they were issued until the issue of the bonus shares.
- (2) A proportionate part of any amount attributed to the original shares, in respect of a tax year, immediately before the bonus shares are issued is attributed to each of the shares in the holding consisting of the original shares and the bonus shares, in respect of that year.
- (3) After the issue of the bonus shares this Part applies as if—
  - (a) the original issue had included the bonus shares, and
  - (b) the bonus shares had been held by the investor, as sole beneficial owner, continuously from the time the original shares were issued until the bonus shares were issued.
- (4) In this section—
  - “corresponding bonus shares” means bonus shares that are in the same company, are of the same class, and carry the same rights as the original shares,
  - “original issue” means the issue of shares forming the investment.

## **CHAPTER 6**

### **WITHDRAWAL OR REDUCTION OF CITR**

#### *Introduction*

### **359 Overview of Chapter**

- (1) This Chapter provides for CITR to be withdrawn or reduced under—
  - (a) section 360 (disposal of loan during 5 year period),
  - (b) section 361 (disposal of securities or shares during 5 year period),
  - (c) section 362 (repayment of loan capital during 5 year period),
  - (d) section 363 (value received by investor during 6 year period: loans),
  - (e) section 364 (value received by investor during 6 year period: securities or shares),
  - (f) section 371 (CITR subsequently found not to have been due).

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- (2) This Chapter also provides for the manner in which CITR is to be withdrawn or reduced (see section 372).
- (3) In this Chapter “the 6 year period” in relation to the investment is the period of 6 years beginning 12 months before the investment date.

### *Disposals*

#### **360 Disposal of loan during 5 year period**

- (1) If the investment consists of a loan and within the 5 year period—
  - (a) the investor disposes of the whole of the investment, otherwise than by way of a permitted disposal, or
  - (b) the investor disposes of a part of the investment,any CITR attributable to the investment in respect of any tax year must be withdrawn.
- (2) For the purposes of this section—
  - (a) a disposal is “permitted” if—
    - (i) it is by way of a distribution in the course of dissolving or winding up the CDFI,
    - (ii) it is a disposal within section 24(1) of TCGA 1992 (entire loss, destruction, dissipation or extinction of asset),
    - (iii) it is a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible), or
    - (iv) it is made after the CDFI has ceased to be accredited under this Part, and
  - (b) a full or partial repayment of the loan is not treated as giving rise to a disposal.

#### **361 Disposal of securities or shares during 5 year period**

- (1) This section applies if the investment consists of securities or shares and—
  - (a) the investor disposes of the whole or any part of the investment (“the former investment”) within the 5 year period,
  - (b) the CDFI has not ceased to be accredited before the disposal, and
  - (c) the disposal does not arise as a result of an event within section 366(1)(a) (repayment, redemption or repurchase of securities or shares included in the investment).
- (2) If the disposal is not a qualifying disposal, any CITR attributable to the former investment in respect of any tax year must be withdrawn.
- (3) If the disposal is a qualifying disposal, any CITR attributable to the former investment for a tax year must—
  - (a) if it is greater than A, be reduced by A, and
  - (b) in any other case, be withdrawn.

For this purpose “A” is an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment.

- (4) For the purposes of this section “qualifying disposal” means a disposal that is—
  - (a) by way of a bargain made at arm's length, or

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(b) a permitted disposal (within the meaning of section 360).

(5) If for any tax year—

- (a) the amount of CITR attributable to the former investment (“B”) is less than
- (b) the amount (“C”) which is equal to 5% of the invested amount in respect of the former investment for that year,

subsection (3)(a) has effect in relation to that year as if the amount or value referred to in subsection (3) were reduced by multiplying it by the fraction—

$$\frac{B}{C}$$

(6) If the amount of CITR attributable to the former investment in respect of a tax year has been reduced before the CITR is obtained, the amount referred to in subsection (5) as B is to be treated for the purposes of that subsection as the amount it would have been without that reduction.

(7) Subsection (6) does not apply to a reduction by virtue of section 358 (attribution: bonus shares).

### *Repayment of loans*

## **362 Repayment of loan capital during 5 year period**

(1) If the investment consists of a loan and—

- (a) the average capital balance of the loan for the third, fourth or final year of the 5 year period is less than the permitted balance for the year in question, and
- (b) the difference between those balances is not an amount of insignificant value, any CITR attributable to the investment in respect of any tax year must be withdrawn.

(2) For the purposes of this section—

“the average capital balance” of the loan for a period is the mean of the daily balances of capital outstanding during that period, ignoring any non-standard repayments of the loan made in that period or at any earlier time, and

“the permitted balance” of the loan is—

- (a) for the third year of the 5 year period, 75% of the average capital balance for the period of 6 months beginning 18 months after the investment date,
- (b) for the fourth year of that period, 50% of that balance, and
- (c) for the final year of that period, 25% of that balance.

(3) For the purposes of subsection (2) a repayment of the loan is a non-standard repayment if subsection (4) or (5) applies.



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- (4) This subsection applies if the repayment is made at the choice or discretion of the CDFI, and not as a direct or indirect consequence of any obligation provided for under the terms of the loan agreement.
- (5) This subsection applies if the repayment is made as a result of the failure of the CDFI to meet any obligation of the loan agreement which—
  - (a) is imposed merely because of the commercial risks to which the investor is exposed as lender under that agreement, and
  - (b) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Part.
- (6) For the purposes of this section “an amount of insignificant value” means an amount which—
  - (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the average capital balance of the loan for the year of the 5 year period in question.

### *Receipts of value*

## **363 Value received by investor during 6 year period: loans**

- (1) This section applies if the investment consists of a loan and the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period.
- (2) The investor is treated for the purposes of—
  - (a) section 337 (determination of “invested amount”), and
  - (b) section 362 (repayments of loan capital),as having received a repayment of the loan of an amount equal to the amount of the value received.
- (3) For those purposes the repayment is treated as made—
  - (a) if the value is received in the first or second year of the 6 year period, at the beginning of that second year, and
  - (b) if the value is received in a later year of that period, at the beginning of the year in question.
- (4) For the purposes of section 362 the repayment is treated as a repayment other than a non-standard repayment (within the meaning of that section).
- (5) For the purposes of this section “an amount of insignificant value” means an amount which—
  - (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the average capital balance of the loan for the year of the 6 year period in which the value is received.
- (6) For the purposes of subsection (5)(b)—
  - (a) “the average capital balance” of the loan for a year is the mean of the daily balances of capital outstanding during the year (ignoring the receipt of value in question), and

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- (b) any value received in the first year of the 6 year period is treated as received at the beginning of the second year of that period.
- (7) This section is subject to section 368 (value received if there is more than one investment).
- (8) Value received is ignored, for the purposes of this section, so far as the CITR attributable to any loan, securities or shares in respect of any one or more tax years has already been reduced or withdrawn on its account.

### **364 Value received by investor during 6 year period: securities or shares**

- (1) This section applies if the investment consists of securities or shares and—
  - (a) the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period,
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by the investor, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
  - (c) the receipt is wholly or partly in excess of the permitted level of receipts in respect of the continuing investment, and
  - (d) the amount of that excess (“the excess”) is not an amount of insignificant value.
- (2) Any CITR attributable to the continuing investment in respect of any tax year must be withdrawn.
- (3) For the purposes of subsection (1) the permitted level of receipts is exceeded if—
  - (a) any amount of value is received by the investor (ignoring any amounts of insignificant value) in the first 3 years of the 6 year period, or
  - (b) the total amount of value received by the investor (ignoring any amounts of insignificant value)—
    - (i) before the beginning of the fifth year of that period, exceeds 25% of the invested capital,
    - (ii) before the beginning of the final year of that period, exceeds 50% of the invested capital, or
    - (iii) before the end of that period, exceeds 75% of the invested capital.
- (4) In this section—
  - “the invested capital”, in relation to the continuing investment, means the amount subscribed for the securities or shares concerned, and
  - “an amount of insignificant value” means an amount of value which—
    - (a) is not more than £1,000, or
    - (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the securities or shares included in the continuing investment.
- (5) This section is subject to section 368 (value received if there is more than one investment).
- (6) Value received is ignored, for the purposes of this section, so far as CITR attributable to any loan, securities or shares in respect of any one or more tax years has already been reduced or withdrawn on its account.

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### **365 Receipts of insignificant value to be added together**

- (1) This section applies if—
  - (a) value is received (“the relevant receipt”) by the investor from the CDFI at any time during the 6 year period relating to the investment,
  - (b) the investor has received from the CDFI one or more receipts of insignificant value at a time or times—
    - (i) during that period, but
    - (ii) not later than the time of the relevant receipt, and
  - (c) the total amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value.
- (2) The investor is treated for the purposes of this Part as if the relevant receipt had been a receipt of an amount of value equal to that total amount.
- (3) A receipt does not fall within subsection (1)(b) if the whole or any part of it has previously formed part of a total amount falling within subsection (1)(c).
- (4) For the purposes of this section “an amount of insignificant value” means an amount of value which—
  - (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the relevant amount.
- (5) If the investment consists of a loan, the relevant amount for the purposes of subsection (4) is—
  - (a) if the relevant receipt is received in the first or second year of the 6 year period, the average capital balance of the loan for the second year of that period, and
  - (b) if the relevant receipt is received in a later year, the average capital balance of the loan for the year in question.
- (6) For the purposes of subsection (5)—
  - (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the relevant receipt and any receipts within subsection (1)(b) are ignored when calculating the average capital balance for the year in question.
- (7) If the investment consists of securities or shares, the relevant amount for the purposes of subsection (4) is—
  - (a) if the relevant receipt is received in the first year of the 6 year period, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the relevant receipt is received, and
    - (ii) have been held by the investor, as sole beneficial owner, continuously since the investment was made.

### **366 When value is received**

- (1) For the purposes of this Chapter the investor receives value from the CDFI at any time when the CDFI—
  - (a) repays, redeems or repurchases any securities or shares included in the investment,

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- (b) releases or waives any liability of the investor to the CDFI or discharges, or undertakes to discharge, any liability of the investor to a third person,
  - (c) makes a loan or advance to the investor which has not been repaid in full before the investment is made,
  - (d) provides a benefit or facility for the investor or any associate of the investor,
  - (e) disposes of an asset to the investor for no consideration or for a consideration of an amount or value which is less than the market value of the asset,
  - (f) acquires an asset from the investor for a consideration of an amount or value which is more than the market value of the asset, or
  - (g) makes a payment to the investor other than a qualifying payment.
- (2) For the purposes of subsection (1)(b) the CDFI is treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (3) For the purposes of subsection (1)(c) the following are treated as loans made by the CDFI to the investor—
- (a) the amount of any debt due from the investor to the CDFI (other than an ordinary trade debt), and
  - (b) the amount of any debt due from the investor to a third person which has been assigned to the CDFI.
- (4) For the purposes of this section—
- (a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment,
  - (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would have been a qualifying payment, and
  - (c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to that person's order or for that person's benefit.
- (5) In subsection (4) references to “a person” include references to any other person who, at any time in the 6 year period, is connected with that person, whether or not the other person is so connected at the material time.
- (6) In this section—
- “qualifying payment” means—
- (a) any payment by any person for any goods, services or facilities provided by the investor (in the course of the investor's trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities,
  - (b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person,
  - (c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or securities of that company,
  - (d) any payment for the acquisition of an asset which does not exceed its market value,

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- (e) the payment by any person, as rent for any property occupied by the person, of an amount which is not more than a reasonable and commercial rent for the property, and
- (f) a payment in discharge of an ordinary trade debt, and  
“ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business if any credit given—
  - (a) is for not more than 6 months, and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

### **367 The amount of value received**

In a case falling within a provision listed in column 1 of the following table, the amount of value received for the purposes of this Chapter is given by the corresponding entry in column 2 of the table.

<i>Provision</i>	<i>The amount of value received</i>
Section 366(1)(a)	The amount received by the investor
Section 366(1)(b)	The amount of the liability
Section 366(1)(c)	The amount of the loan or advance, less the amount of any repayment made before the investment is made
Section 366(1)(d)	The cost to the CDFI of providing the benefit or facility, less any consideration given for it by the investor or any associate of the investor
Section 366(1)(e) or (f)	The difference between the market value of the asset and the consideration (if any) received for it
Section 366(1)(g)	The amount of the payment

### **368 Value received if there is more than one investment**

- (1) This section applies if—
  - (a) the investor makes two or more investments in the CDFI,
  - (b) the investor is eligible for and claims CITR in respect of those investments, and
  - (c) the investor receives value (other than value within section 366(1)(a)) which falls within the 6 year periods relating to two or more of those investments.
- (2) Sections 363, 364, 365 and 369 have effect in relation to each investment referred to in subsection (1)(c) as if the amount of the value received were reduced by multiplying it by the fraction—

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$$\frac{A}{B}$$

where—

- (a) A is the appropriate amount in respect of the investment in question, and
  - (b) B is the sum of that amount and the appropriate amount or amounts in respect of the other investment or investments.
- (3) If the investment consists of a loan, the appropriate amount for the purposes of subsection (2) is—
- (a) if the value is received in the first or second year of the 6 year period, the average capital balance of the loan for the second year of that period, and
  - (b) if the value is received in a later year, the average capital balance of the loan for the year in question.
- (4) For the purposes of subsection (3)—
- (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the receipt of value is ignored when calculating the average capital balance for the year in question.
- (5) If the investment consists of securities or shares, the appropriate amount for the purposes of subsection (2) is—
- (a) if the value is received in the first year of the 6 year period, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the value is received, and
    - (ii) have been held by the investor, as sole beneficial owner, continuously since the investment was made.

### **369 Effect of receipt of value on future claims for CITR**

- (1) This section applies if the investment consists of securities or shares and—
- (a) the investor receives any value (other than an amount of insignificant value) from the CDFI during the 6 year period, and
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by the investor, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
- but no CITR attributable to the continuing investment is withdrawn under section 364 as a result of the receipt.
- (2) For the purposes of calculating any CITR in respect of any securities or shares included in the continuing investment for any relevant tax year, the amount subscribed for the securities or shares included in the continuing investment is treated as reduced by the amount of the value received.

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- (3) For this purpose the “relevant” tax years are—
- (a) any tax year ending on or after the anniversary of the investment date immediately before the receipt of value, or
  - (b) if the value was received on an anniversary of the investment date, any tax year ending on or after that anniversary.
- (4) For the purposes of this section “an amount of insignificant value” means an amount of value which—
- (a) is not more than £1,000, or
  - (b) if it is more than £1,000, is insignificant in relation to the amount subscribed by the investor for the securities or shares included in the continuing investment.

### **370 Receipts of value by or from connected persons**

In sections 363 to 369, if the context permits, references to the investor or the CDFI include references to any person who at any time in the 6 year period relating to the investment is connected with the investor or, as the case may be, the CDFI, whether or not the person is connected at the material time.

*CITR not due*

### **371 CITR subsequently found not to have been due**

If any CITR has been obtained which is subsequently found not to have been due, the CITR must be withdrawn.

*Manner of withdrawal or reduction*

### **372 Manner of withdrawal or reduction of CITR**

- (1) This section applies if any CITR has been obtained which falls to be withdrawn or reduced under this Chapter.
- (2) The CITR must be withdrawn or reduced by making an assessment to income tax for the tax year for which the CITR was obtained.
- (3) No assessment may be made under subsection (2) because of any event occurring after the death of the investor.

## **CHAPTER 7**

### **SUPPLEMENTARY AND GENERAL**

*Miscellaneous*

### **373 Information to be provided by the investor**

- (1) If—

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- (a) the investor has obtained CITR in respect of the investment, and
- (b) an event occurs because of which CITR attributable to the investment for any tax year falls to be withdrawn or reduced by virtue of section 360, 361, 362 or 364,

the investor must give an officer of Revenue and Customs a notice containing particulars of the event.

- (2) Subject to subsection (3), a notice under subsection (1) must be given not later than the normal self-assessment filing date for the tax year in which the event occurred.

- (3) If—

- (a) the investor is required to give a notice as a result of the receipt of value by a person connected with the investor (see section 370), and
- (b) the end of the period of 60 days beginning when the investor comes to know of that event is later than the final notice date under subsection (2),

the notice must be given before the end of that 60 day period.

### **374 Disclosure**

- (1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

- (a) by the Secretary of State to an officer of Revenue and Customs for the purpose of assisting Her Majesty's Revenue and Customs to discharge their functions under the Income Tax Acts so far as relating to matters arising under this Part, or
- (b) by an officer of Revenue and Customs to the Secretary of State for the purpose of assisting the Secretary of State to discharge the Secretary of State's functions under this Part.

- (2) Information obtained by such disclosure is not to be further disclosed except for the purposes of legal proceedings arising out of the functions referred to.

### **375 Nominees**

- (1) For the purposes of this Part—

- (a) loans made by or to, or disposed of by, a nominee for a person are treated as made by or to, or disposed of by, that person, and
- (b) securities or shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for a person are treated as subscribed for by, issued to, acquired or held by or disposed of by that person.

- (2) For the purposes of subsection (1) references to things done by or to a nominee for a person include things done by or to a bare trustee for a person.

### **376 Application for postponement of tax pending appeal**

No application may be made under section 55(3) or (4) of TMA 1970 (application for postponement of payment of tax pending appeal) on the ground that an individual is eligible for CITR unless a claim for the CITR has been duly made by the individual under this Part.



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### **377 Identification of securities or shares on a disposal**

- (1) This section applies for the purpose of identifying the securities or shares disposed of in any case where—
  - (a) the investor disposes of part of a holding of securities or shares (“the holding”), and
  - (b) the holding includes securities or shares to which CITR is attributable in respect of one or more tax years that have been held continuously by the investor from the time they were issued until the disposal.
- (2) Any disposal by the investor of securities or shares included in the holding which have been acquired by the investor on different days is treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (3) If there is a disposal by the investor of securities or shares included in the holding which have been acquired by the investor on the same day, any of those securities or shares—
  - (a) to which CITR is attributable, and
  - (b) which have been held by the investor continuously from the time they were issued until the time of disposal,are treated as disposed of after any other securities or shares included in the holding which were acquired by the investor on that day.
- (4) For the purposes of this section a holding of securities is any number of securities of a company which—
  - (a) carry the same rights,
  - (b) were issued under the same terms, and
  - (c) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the securities grows or diminishes as securities carrying those rights and issued under those terms are acquired or disposed of.

- (5) For the purposes of this section a holding of shares is any number of shares in a company which—
  - (a) are of the same class, and
  - (b) are held by the investor in the same capacity.

It does not matter for this purpose that the number of the shares grows or diminishes as shares of that class are acquired or disposed of.

- (6) In a case to which section 127 of TCGA 1992 (equation of original shares and new holding) applies, shares comprised in the new holding are to be treated for the purposes of subsections (2) and (3) as acquired when the original shares were acquired.
- (7) In subsection (6)—
  - (a) the reference to section 127 of TCGA 1992 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and
  - (b) “original shares” and “new holding” have the same meaning as in section 127 of TCGA 1992 or (as the case may be) that section as applied by virtue of the enactment in question.

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## Definitions

### 378 Meaning of “issue of securities or shares”

- (1) In this Part—
  - (a) references (however expressed) to an issue of securities of any body are to such securities of that body as carry the same rights and are issued under the same terms and on the same day, and
  - (b) references (however expressed) to an issue of shares in any body are to such shares in that body as are of the same class and issued on the same day.
- (2) In this Part references (however expressed) to an issue of securities of or shares in a body to an individual are to such of the securities or shares in an issue of securities of or shares in that body as are issued to that individual in one capacity.

### 379 Meaning of “disposal”

- (1) Subject to subsection (2), in this Part “disposal” is read in accordance with TCGA 1992, and related expressions are read accordingly.
- (2) An investor is treated as disposing of any securities or shares which but for section 151BC(1) of TCGA 1992 the investor—
  - (a) would be treated as exchanging for other securities or shares by virtue of section 136 of that Act, or
  - (b) would be so treated but for section 137(1) of that Act (which restricts section 136 to genuine reconstructions).

### 380 Construction of references to being “held continuously”

- (1) This section applies if for the purposes of this Part it becomes necessary to determine whether the investor has held the investment (or any part of it) continuously throughout any period.
- (2) The investor is not treated as having held the investment (or any part of it) continuously throughout a period if the investor—
  - (a) is treated, under any provision of TCGA 1992, as having disposed of and immediately re-acquired the investment (or part) at any time during the period, or
  - (b) is treated as having disposed of the investment (or part) at any such time, by virtue of section 379(2).

### 381 Meaning of “associate”

- (1) In this Part “associate”, in relation to a person, means—
  - (a) any relative or partner of that person,
  - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of that person (living or dead), is or was a settlor, and
  - (c) if that person has an interest in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—
    - (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and

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- (ii) if that person is a company, any other company which has an interest in those shares or obligations.
- (2) In subsection (1)(a) and (b) “relative” means spouse or civil partner, ancestor or lineal descendant.
- (3) In subsection (1)(b) “settlor” and “settlement” have the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act).

### **382 Minor definitions etc**

- (1) In this Part—
  - “body” includes an unincorporated association, and
  - “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise).
- (2) For the purposes of this Part shares in a company are not treated as being of the same class unless they would be so treated if dealt in on [<sup>F91</sup>a recognised stock exchange].
- (3) For the purposes of this Part the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (4) In this Part—
  - (a) references to CITR obtained by the investor in respect of any investment (or part of an investment) include references to CITR obtained by the investor in respect of that investment (or part) at any time after the investor has disposed of it, and
  - (b) references to the withdrawal or reduction of CITR obtained by the investor in respect of the investment (or any part of it) include references to the withdrawal or reduction of CITR obtained in respect of that investment (or part) at any such time.
- (5) In the case of any condition that cannot be met until a future date—
  - (a) references in this Part to a condition being met for the time being are to nothing having occurred to prevent its being met, and
  - (b) references to its continuing to be met are to nothing occurring to prevent its being met.

#### **Textual Amendments**

**F91** Words in s. 382(2) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(8\)](#)

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## PART 8

### OTHER RELIEFS

#### CHAPTER 1

##### INTEREST PAYMENTS

###### *The relief: introduction*

### **383 Relief for interest payments**

- (1) A person who pays interest in a tax year is entitled to relief for the tax year for the interest if—
  - (a) the loan on which the interest is payable is a loan to which a provision specified in subsection (2) applies,
  - (b) the interest is eligible for relief in accordance with this Chapter, and
  - (c) the person makes a claim.
- (2) The provisions are—
  - (a) section 388 (loan to buy plant or machinery for partnership use),
  - (b) section 390 (loan to buy plant or machinery for employment use),
  - (c) section 392 (loan to buy interest in close company),
  - (d) section 396 (loan to buy interest in employee-controlled company),
  - (e) section 398 (loan to invest in partnership),
  - (f) section 401 (loan to invest in co-operative), and
  - (g) section 403 (loan to pay inheritance tax).
- (3) The amount of the relief given under subsection (1) is equal to the amount of the interest eligible for relief.
- (4) The relief is given by deducting that amount in calculating the person's net income for the tax year in which the interest is paid (see Step 2 of the calculation in section 23).
- (5) This section is subject to—
  - (a) section 384 (general restrictions on relief under this Chapter),
  - (b) section 385 (general provisions about loans),
  - (c) section 386 (loans partly meeting requirements),
  - (d) section 387 (exclusion of double relief etc), and
  - (e) section 405 (carry back and forward of relief for interest on loans within section 403).
- (6) See also section 51(2) of FA 2005 (under which this Chapter applies as if arrangements falling within section 47 of that Act were loans and alternative finance return were interest).

### **384 General restrictions on relief under Chapter**

- (1) Relief is not to be given under this Chapter for interest on a debt incurred—
  - (a) by overdrawing an account, or

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- (b) by debiting the account of any person as the holder of a credit card or under similar arrangements.
- (2) If interest is paid at a rate in excess of a reasonable commercial rate, relief is not to be given under this Chapter for so much of the interest as represents the excess.

### **385 General provisions about loans**

- (1) References in this Chapter to a loan being used or used in any way—
  - (a) are references to the money lent being applied or, as the case may be, applied in that way, and
  - (b) except in section 403 include references to a loan being used to meet expenditure already incurred or, as the case may be, already incurred on such a use.
- (2) Sections 392, 396, 398, 401 and 403 apply to a loan only if it is made—
  - (a) in connection with the use of money, and
  - (b) on the occasion of its use or within what is in the circumstances a reasonable time from its use.
- (3) Those sections apply to a loan only if the loan is used as mentioned in those sections without first having been used for another purpose.
- (4) For the purposes of this Chapter the giving of credit for any money due from the purchaser under a sale is treated as the making of a loan used by the purchaser in making the purchase.

### **386 Loans partly meeting requirements**

- (1) If, at the time a loan (“the mixed loan”) is used, only part of the mixed loan is a loan to which any of the provisions specified in section 383(2) apply, for the purposes of this Chapter that part (“the qualifying part”) is treated as a loan to which the provision in question applies.
- (2) Accordingly, the corresponding proportion of the interest on the mixed loan is eligible for relief.
- (3) If a mixed loan is partly repaid, for the purposes of this Chapter the corresponding proportion of the repayment is treated as repaying the qualifying part (but see section 406(5)).
- (4) In this section “the corresponding proportion” means the proportion that the qualifying part bears to the whole of the mixed loan at the time the mixed loan is used.

### **387 Exclusion of double relief etc**

- (1) Interest for which relief is given under this Chapter is not allowable as a deduction for any other income tax purposes.
- (2) No relief is given under this Chapter for any tax year for the payment of any interest taken into account in calculating the profits of—
  - (a) any trade, profession or vocation,
  - (b) any UK property business, or
  - (c) any overseas property business.

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- (3) If interest is so taken into account, no relief is given under this Chapter for any relevant tax year for other interest on the same debt or liability.
- (4) A tax year is a relevant one if the interest has been taken into account in calculating the profits of the trade, profession, vocation or business of the tax year.
- (5) For the purposes of subsection (3) all interest which—
  - (a) is capable of being taken into account in calculating the profits of a trade, profession, vocation or business, and
  - (b) is payable by the same person on money advanced to the person on current account,
 is treated as interest on the same debt.
- (6) It does not matter whether the money is advanced—
  - (a) on one or more accounts, or
  - (b) by the same or separate banks or other persons.
- (7) The reference in subsections (2) to (4) to interest taken into account is a reference to interest allowed as a deduction in an assessment which can no longer be varied (whether on appeal or otherwise).

#### *Loans for plant or machinery*

### **388    Loan to buy plant or machinery for partnership use**

- (1) This section applies to a loan that is used for capital expenditure on the provision of plant or machinery to which subsection (2) applies.
- (2) This subsection applies to plant or machinery if—
  - (a) it is in use for the purposes of a trade, profession or ordinary property business carried on by a partnership, and
  - (b) the partnership is entitled to a capital allowance or liable to a balancing charge in respect of it under section 264 of CAA 2001 (partnership using property of a partner) for the period of account in which the interest is paid.
- (3) A partnership is treated as entitled to a capital allowance or liable to a balancing charge in respect of plant or machinery for a period of account (“the later period”) for the purposes of subsection (2)(b) if—
  - (a) it has been so entitled or liable for a previous period of account, and
  - (b) no disposal value has been brought into account in respect of it in the later period or any earlier period of account.
- (4) In this section and sections 389 and 390—
  - “capital expenditure” has the meaning given in section 4 of CAA 2001,
  - “period of account” has the same meaning as in that Act (see section 6(2) to (6) of that Act), and
  - “ordinary property business” has the same meaning as in Part 2 of that Act (see section 16 of that Act).

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### **389 Eligibility requirements for interest on loans within section 388**

- (1) Interest on a loan within section 388(1) is eligible for relief if conditions A and B are met.
- (2) Condition A is that the interest is paid by an individual who is a member of the partnership referred to in section 388(2).
- (3) Condition B is that the interest falls due and payable not later than 3 years after the end of the period of account in which the loan was made.
- (4) If the machinery or plant is in use partly for the purposes of the trade, profession or ordinary property business carried on by the partnership referred to in section 388(2) (“trade purposes”) and partly for other purposes, only part of the interest is eligible for relief.
- (5) That part is such part as it is just and reasonable to attribute to trade purposes, having regard to all the relevant circumstances and, in particular, to the extent of the use for other purposes.

### **390 Loan to buy plant or machinery for employment use**

- (1) This section applies to a loan that is used for capital expenditure on the provision of plant or machinery to which subsection (2) applies.
- (2) This subsection applies to plant or machinery if—
  - (a) it is in use for the purposes of an office or employment held by an individual in the tax year,
  - (b) the plant or machinery belongs to the individual, and
  - (c) the individual is entitled to a capital allowance or liable to a balancing charge in respect of it under Part 2 of CAA 2001 for the tax year.
- (3) An individual is treated as entitled to a capital allowance or liable to a balancing charge in respect of plant or machinery for a tax year (“the later year”) for the purposes of subsection (2)(c) if—
  - (a) the individual has been so entitled or liable for a previous tax year, and
  - (b) no disposal value has been brought into account in respect of it in the later year or any earlier year.
- (4) An individual is also treated as so entitled or liable for the purposes of this section if the individual would be so entitled or liable but for a contribution made by the individual's employer.

### **391 Eligibility requirements for interest on loans within section 390**

- (1) Interest on a loan within section 390(1) is eligible for relief if conditions A and B are met.
- (2) Condition A is that the interest is paid by the individual referred to in section 390(2).
- (3) Condition B is that the interest falls due and payable not later than 3 years after the end of the tax year in which the loan was made.

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- (4) If the machinery or plant is in use partly for the purposes of the office or employment referred to in section 390(2) (“employment purposes”) and partly for other purposes, only part of the interest is eligible for relief.
- (5) That part is such part as it is just and reasonable to attribute to employment purposes having regard to all the relevant circumstances and, in particular, to the extent of the use for other purposes.

### *Loans for interests in close companies*

## **392    Loan to buy interest in close company**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
  - (a) acquiring any part of the ordinary share capital of a close company that is not a close investment-holding company,
  - (b) lending to such a company money which is used wholly and exclusively—
    - (i) for the purposes of the business of the company, or
    - (ii) for the purposes of the business of any associated company of the company which is also a close company that is not a close investment-holding company, or
  - (c) repaying another loan to which this section applies.
- (3) Subsection (2)(a) does not apply if at any time the individual by whom the shares are acquired or that individual's spouse or civil partner—
  - (a) makes a claim for relief in respect of them under Part 5 of this Act or, in the case of shares issued before 6 April 2007, Chapter 3 of Part 7 of ICTA (enterprise investment scheme), or
  - (b) makes a claim in respect of them under Schedule 5B to TCGA 1992 (enterprise investment scheme: reinvestment).
- (4) In this section and section 393—
 

“close investment-holding company” has the meaning given by section 13A(1) of ICTA (companies not qualifying for small companies' relief), and

“associated company” has the meaning given by section 416 of ICTA.
- (5) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

## **393    Eligibility requirements for interest on loans within section 392**

- (1) Interest on a loan within section 392(1) to an individual is eligible for relief only if—
  - (a) when the interest is paid the company is not a close investment-holding company, and
  - (b) the capital recovery condition and either the full-time working conditions or the material interest conditions are met.



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- (2) The capital recovery condition is that in the period from the use of the loan to the payment of the interest the individual has not recovered any capital from the company, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (3) The full-time working conditions are that—
  - (a) when the interest is paid the individual holds part of the ordinary share capital of the company, and
  - (b) in the period from the use of the loan to the payment of the interest the greater part of the individual's time has been spent in the actual management or conduct of the company or of an associated company of the company.
- (4) The material interest conditions are that—
  - (a) when the interest is paid the individual has a material interest in the company (see section 394), and
  - (b) if the company exists wholly or mainly for the purpose of holding investments or other property, either—
    - (i) the condition in subsection (3)(b) is met, or
    - (ii) no property held by the company is used as a residence by the individual.

### **394 Meaning of “material interest” in section 393**

- (1) For the purposes of section 393(4)(a) an individual has a material interest in a company if a relevant person meets condition A or B.
- (2) In this section “relevant person” means—
  - (a) the individual, either alone or with one or more associates (see section 395), or
  - (b) any associate of the individual with or without such other associates.
- (3) Condition A is that the relevant person is the beneficial owner of, or able directly or indirectly to control, more than 5% of the ordinary share capital of the company.
- (4) Condition B is that the relevant person possesses, or is entitled to acquire, such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 5% of the assets which would then be available for distribution among the participators.
- (5) In this section—
  - “control” has the meaning given by section 416(2) to (6) of ICTA, and
  - “participator” has the meaning given by section 417(1) of ICTA.

### **395 Meaning of “associate” in section 394**

- (1) For the purposes of determining under section 394 whether an individual has a material interest in a company, in that section “associate”, in relation to that individual and company, means—
  - (a) a relative or partner of the individual,
  - (b) the trustees of a settlement in relation to which—
    - (i) the individual is a settlor, or
    - (ii) a relative of the individual (living or dead) is or was a settlor,

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- (c) if the individual is interested in any shares or obligations of the company which are subject to a trust, the trustees of the settlement, and
  - (d) if the individual is interested in any shares or obligations of the company which are part of the estate of a deceased person, the personal representatives.
- (2) But, despite subsection (1)(c), the trustees of an employee benefit trust are not regarded for the purposes of section 394 as the associates of an individual merely because the individual has an interest in shares or obligations of the company as a beneficiary of the trust, unless subsection (3) applies.
- (3) This subsection applies if at any time after 26 July 1989 the individual, alone or with associates, or an associate of the individual, alone or with other such associates—
- (a) has been the beneficial owner of more than 5% of the ordinary share capital of the company, or
  - (b) has been able directly or indirectly to control more than 5% of that share capital.
- (4) In subsection (3) “associate” has the meaning given by section 549(4) of ITEPA 2003.
- (5) Sections 552 to 554 of ITEPA 2003 (attribution of interests in company) apply for the purposes of subsection (3) in relation to the individual as they apply for the purposes of the provisions listed in section 549(2) of that Act in relation to an employee.
- (6) In this section—
- “control” has the meaning given by section 416(2) to (6) of ICTA,
  - “employee benefit trust” has the meaning given by section 550 of ITEPA 2003 except that the reference in section 550(3) of that Act to 13 March 1989 is to be read as a reference to 26 July 1989, and
  - “relative” means spouse or civil partner, ancestor or lineal descendant or brother or sister.

### *Loans for interests in employee-controlled companies*

## **396    Loan to buy interest in employee-controlled company**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
- [<sup>F92</sup>(a) acquiring part of the ordinary share capital of a company that first becomes an employee-controlled company—
    - (i) after the date of acquisition, or
    - (ii) not earlier than 12 months before that date, and]
  - (b) repaying another loan to which this section applies.
- (3) For the purposes of this section and section 397, a company is employee-controlled at any time when—
- (a) more than 50% of the issued ordinary share capital of the company is owned beneficially by persons who are full-time employees of the company, and
  - (b) more than 50% of the voting power in the company is so owned.
- (4) If an individual owns beneficially more than 10% of the issued ordinary share capital of, or voting power in, a company, for the purposes of subsection (3) the excess

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is treated as being owned by an individual who is not a full-time employee of the company.

- (5) In this section and section 397 “full-time employee”, in relation to a company, means an individual the greater part of whose time is spent working as an employee or director of the company or of a 51% subsidiary of the company.
- (6) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

#### Textual Amendments

**F92** S. 396(2)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(2)**

### 397 Eligibility requirements for interest on loans within section 396

- (1) Interest on a loan within section 396 to an individual is eligible for relief only if conditions A to D are met.
- (2) Condition A is that the company is, throughout the period beginning with the date on which the shares are acquired and ending with the date on which the interest is paid (“the payment date”)—
  - (a) an unquoted company that is UK resident and is not resident outside the United Kingdom, and
  - (b) a trading company or the holding company of a trading group.
- (3) Condition B is that during the tax year in which the interest is paid the company either—
  - (a) first becomes an employee-controlled company, or
  - (b) is such a company throughout a period of at least 9 months.
- (4) Condition C is that—
  - (a) the individual is a full-time employee of the company throughout the period beginning with the date on which the loan is used (“the use date”) and ending with the payment date, or
  - (b) the individual ceased to be such an employee not more than 12 months before the payment date and was such an employee throughout the period beginning with the use date and ending with the date the individual ceased to be such an employee.
- (5) Condition D is that in the period from the use of the loan to the payment of the interest the individual has not recovered any capital from the company, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (6) In this section—
  - “holding company” means a company whose business (ignoring any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75% subsidiaries,
  - “trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades,

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“trading group” means a group the business of whose members taken together consists wholly or mainly of the carrying on of a trade or trades (taking a group to consist of a company with one or more 75% subsidiaries and those subsidiaries), and

“unquoted company” means a company none of whose shares is [F93]included in the official UK list ].

#### Textual Amendments

**F93** Words in s. 397(6) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(9\)](#)

### *Loans for investing in partnerships*

#### **398 Loan to invest in partnership**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
  - (a) purchasing a share in a partnership,
  - (b) contributing money to a partnership, by way of capital or premium, that is used wholly for the purposes of the trade or profession carried on by the partnership,
  - (c) advancing money to a partnership that is so used, and
  - (d) repaying another loan to which this section applies.
- (3) This section is subject to section 411 (ineligibility of interest where business is occupation of commercial woodlands).

#### **399 Eligibility requirements for interest on loans within section 398**

- (1) Interest on a loan within section 398 to an individual is eligible for relief only if conditions A and B are met.
- (2) Condition A is that throughout the period from the use of the loan until the interest is paid the individual has been a member of the partnership otherwise than—
  - (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), or
  - (b) as a member of an investment LLP.
- (3) Condition B is that in that period the individual has not recovered any capital from the partnership, apart from any amount taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).
- (4) If section 400 (film partnerships) applies in a tax year, only 40% of the interest that would otherwise be eligible for relief for that year is eligible.
- (5) For the purposes of subsection (2) an individual who is not a member of a partnership is treated as such a member if—
  - (a) the partnership carries on a profession,
  - (b) the individual is employed by the partnership in a senior capacity, and

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- (c) the individual is allowed—
  - (i) to act independently in dealing with clients of the partnership, and
  - (ii) to act generally in such a way as to be indistinguishable from the partners in relations with those clients.
- (6) For the purposes of subsection (2) “investment LLP” means a limited liability partnership—
  - (a) whose business consists wholly or mainly of the making of investments, and
  - (b) the principal part of whose income is derived from investments,and whether a limited liability partnership is an investment LLP is determined for each period of account of the partnership.

#### **400 Film partnerships**

- (1) This section applies in a tax year if—
  - (a) the partnership (“the film partnership”) carries on a trade,
  - (b) the profits or losses of the trade are calculated in accordance with Chapter 9 of Part 2 of ITTOIA 2005 (films etc),
  - (c) the loan is secured on an asset or activity of another partnership (“the investment partnership”),
  - (d) the individual to whom the loan is made (“A”) is or has been a member of the investment partnership, and
  - (e) at any time in the year the proportion of the profits of the investment partnership to which A is entitled is less than the proportion of that partnership's capital contributed by A at that time.
- (2) For the purposes of subsection (1)(c), a loan is secured on an asset or activity of a partnership if there is an arrangement—
  - (a) under which such an asset may be used or relied upon wholly or partly to guarantee repayment of any part of the loan, or
  - (b) because of which any part of the loan is expected to be repaid directly or indirectly out of assets held by or income accruing to the partnership.
- (3) In subsection (1)(e)—
  - “profits” excludes any amount that would not be taken into account as, or for the purposes of calculating, income for income tax purposes, and
  - “partnership's capital” means—
    - (a) anything that is, or in accordance with generally accepted accounting practice would be, accounted for as partners' capital or partners' equity, and
    - (b) amounts lent to the partnership by partners or persons connected with partners.
- (4) So far as the investment partnership's capital includes at any time any of the following amounts, they are treated as amounts contributed by A—
  - (a) any amount A paid to acquire any interest in the partnership, so far as A retains the interest at that time,
  - (b) any amount made available by A directly or indirectly to another person, so far as that person retains any interest in the partnership at that time,
  - (c) any amount A lent to the partnership, so far as it has not been repaid at that time,

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- (d) any amount A made available directly or indirectly to another person, so far as any amount that person lent to the partnership has not been repaid at that time, and
  - (e) an amount made available in any other way prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (5) Regulations under subsection (4)(e)—
- (a) may make provision having retrospective effect,
  - (b) may make provision generally or only in relation to specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) may make transitional, consequential or incidental provision, and
  - (e) may be made only if a draft of them has been laid before and approved by a resolution of the House of Commons.
- (6) In this section a reference to A includes a reference to a person connected with A.
- (7) Section 993 (meaning of “connected” persons) applies for the purposes of this section with the omission of subsections (3) to (7).

#### *Loans for investing in co-operatives*

### **401     Loan to invest in co-operative**

- (1) This section applies to a loan to an individual that is used in one or more of the ways specified in subsection (2).
- (2) The ways are—
- (a) acquiring shares in a body which is a co-operative,
  - (b) lending money to any such body which is used wholly and exclusively for the purposes of the business of that body or of a subsidiary of that body, and
  - (c) repaying another loan to which this section applies.
- (3) In this Chapter—
- “co-operative” means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the Industrial Common Ownership Act 1976 (c. 78), and
- “subsidiary”, in relation to a co-operative, has the same meaning as for the purposes of section 2 of that Act.

### **402     Eligibility requirements for interest on loans within section 401**

- (1) Interest on a loan within section 401 to an individual is eligible for relief only if conditions A to C are met.
- (2) Condition A is that when the interest is paid the body continues to be a co-operative.
- (3) Condition B is that in the period from the use of the loan to the payment of the interest the greater part of the individual's time has been spent working as an employee of the body or of a subsidiary of the body.

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- (4) Condition C is that in that period the individual has not recovered any capital from the body, apart from any taken into account under section 406(2) (recovered capital that is treated as a repayment of the loan).

### *Loans for paying inheritance tax*

#### **403 Loan to pay inheritance tax**

- (1) This section applies to a loan to the personal representatives of a deceased person if the loan is used—
- (a) in paying inheritance tax that meets the condition specified in subsection (2), or
  - (b) in repaying another loan to which this section applies.
- (2) The condition is that the personal representatives are obliged to pay the tax under section 226(2) of IHTA 1984 (obligation of personal representatives to pay tax on delivery of their account).
- (3) A written statement appearing to be from an officer of Revenue and Customs is sufficient evidence—
- (a) of the amount of inheritance tax that meets the condition specified in subsection (2), and
  - (b) of any statements relevant to its calculation.
- (4) In this section references to inheritance tax include interest payable on that tax.

#### **404 Eligibility requirements for interest on loans within section 403**

Interest on a loan within section 403(1) is eligible for relief only so far as it is paid in respect of a period ending within 12 months from the making of the loan used as mentioned in section 403(1)(a).

#### **405 Carry back and forward of relief for interest on loans within section 403**

- (1) This section applies if relief for any interest on a loan within section 403(1) that is eligible for relief cannot be given for the tax year in which the interest is paid because there is not enough income in that year.
- (2) The person paying the interest is entitled to relief for that interest—
- (a) for the preceding tax year, or
  - (b) if there is not enough income in that year, for the tax year preceding it, and so on.
- (3) If relief cannot be given under subsection (2), it may instead be given—
- (a) for the tax year following that in which the interest is paid, or
  - (b) if there is not enough income in that year, for the tax year following it, and so on.

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### *General and supplementary*

#### **406 Effect of recovery of capital in the case of some loans**

- (1) This section applies if the individual to whom a loan is made to which section 392, 396, 398 or 401 applies recovers any amount of capital from the company, partnership or co-operative concerned at any time after the loan is used.
- (2) The individual is treated for the purposes of this Chapter as having repaid that amount out of the loan at that time, whether or not such a repayment occurred.
- (3) Accordingly, only part of the interest that, apart from any such repayment, would be payable on the loan for any period after that time and eligible for relief is so eligible.
- (4) That part is so much of that interest as is attributable to the amount of the loan after the repayment.
- (5) In the case of a loan to which section 386 applies (loans partly meeting requirements), subsection (3) applies instead of section 386(3) (under which repayments are apportioned between the qualifying and non-qualifying parts of such loans).
- (6) The cases in which an individual is treated as having recovered an amount of capital for the purposes of this section are set out in section 407(1) to (3).

#### **407 Events counting as recovery of capital for section 406**

- (1) An individual is treated as having recovered an amount of capital from a company for the purposes of section 406 if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the ordinary share capital of the company,
    - (ii) by way of repayment of part of that ordinary share capital, or
    - (iii) for assigning a debt due to the individual from the company, or
  - (b) the company repays that amount of a loan or advance from the individual.
- (2) An individual is treated as having recovered an amount of capital from a partnership for those purposes if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the individual's interest in the partnership, or
    - (ii) for assigning a debt due to the individual from the partnership, or
  - (b) the partnership repays that amount of a loan or advance from the individual, or
  - (c) the partnership returns that amount of capital to the individual.
- (3) An individual is treated as having recovered an amount of capital from a co-operative for those purposes if—
  - (a) the individual receives consideration of that amount or value—
    - (i) for the sale, exchange or assignment of part of the individual's shares in the co-operative,
    - (ii) by way of repayment of part of the individual's shares in the co-operative, or
    - (iii) for assigning a debt due to the individual from the co-operative, or



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- (b) the co-operative repays that amount of a loan or advance from the individual.
- (4) A sale or assignment that is not a bargain made at arm's length is treated for the purposes of this section as being made for a consideration of an amount equal to the market value of what is disposed of.

#### **408 Replacement loans**

- (1) This section applies to a replacement loan.
- (2) In subsection (1) “replacement loan” means a loan to which section 392, 396, 398 or 401 applies because the loan is used in repaying another loan (“the replaced loan”) to which that section applies.
- (3) This Chapter, except for sections 385 and 386, applies to the replacement loan as if that loan and the replaced loan were a single loan (subject to subsection (5)).
- (4) Accordingly, any restriction under section 406 (effect of recovery of capital in the case of some loans) which applies to the replaced loan applies to the replacement loan.
- (5) But this Chapter, except for sections 385 and 386, applies as if references to the use of the loan were references to the use of the original loan.

#### **409 Business successions between partnerships**

- (1) This section applies if—
  - (a) a loan to which section 398 applies is made to an individual,
  - (b) the partnership in question (“the old partnership”) is dissolved,
  - (c) on its dissolution another partnership of which the individual is a member (“the new partnership”) is formed to carry on the whole or part of the undertaking carried on by the old partnership, and
  - (d) interest payable on the loan for the period ending with the dissolution of the old partnership was eligible for relief (or would have been had any been payable).
- (2) This Chapter applies as if the old partnership and the new partnership were the same partnership.
- (3) Section 399(5) (salaried partners etc treated as partners) applies for the purposes of subsection (1)(c) as it applies for the purposes of section 399(2).

#### **410 Other business successions and reorganisations**

- (1) This subsection applies if—
  - (a) a loan to which one of the business loan provisions or section 398 (loan to invest in partnership) applies is made to an individual (“the original loan”),
  - (b) the company, partnership or co-operative in question is involved in a transaction as a result of which the individual acquires shares in or makes a loan to another company or a body that is a co-operative,
  - (c) interest payable on the original loan for the period ending with the time of the transaction was eligible for relief (or would have been had any been payable), and

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- (d) had the original loan been made at the time of the transaction and applied in acquiring the shares in or making the loan to the other company or the co-operative, the original loan would have fallen within one of the business loan provisions.
- (2) If subsection (1) applies, from the time of the transaction referred to in subsection (1)
  - (b) the original loan is treated as if it had been made and applied as mentioned in subsection (1)(d).
- (3) In this section “the business loan provisions” means—
  - (a) section 392 (loan to buy interest in close company),
  - (b) section 396 (loan to buy interest in employee-controlled company), and
  - (c) section 401 (loan to invest in co-operative).

#### **411 Ineligibility of interest where business is occupation of commercial woodlands**

- (1) Interest that would be eligible for relief under this Chapter apart from this section is not eligible if—
  - (a) the interest is on a loan to which section 392, 396 or 398 applies, and
  - (b) the business carried on by the close company, employee-controlled company or partnership concerned consists of the occupation of commercial woodlands.
- (2) If only part of the business consists in such occupation, only part of the interest is ineligible for the relief.
- (3) That part is such part of the interest as it is just and reasonable to attribute to that part of the business having regard to all the relevant circumstances and, in particular, to the extent of the other part of the business.
- (4) For the purposes of this section two or more businesses carried on by a company or partnership are to be regarded as a single business.
- (5) In this section “commercial woodlands” means woodlands in the United Kingdom which are managed on a commercial basis and with a view to the realisation of profits.

#### **412 Information**

- (1) A person (“the payer”) who claims relief under this Chapter for a payment of interest made in a tax year is entitled to request the person to whom the interest is paid to give the payer a statement in writing about that interest containing the information specified in subsection (3).
- (2) That request must be in writing.
- (3) The information is—
  - (a) the date when the debt was incurred,
  - (b) the amount of the debt when incurred,
  - (c) the interest paid in the tax year, and
  - (d) the name and address of the debtor.
- (4) The person to whom the interest is paid has a duty to comply with a request under subsection (1) and that duty is enforceable by the payer.

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- (5) This section does not apply if the interest is paid to a building society or to a local authority.

## CHAPTER 2

### GIFT AID

#### *The relief*

#### **413 Overview of Chapter**

- (1) This Chapter gives relief for some gifts of money to charities by individuals.
- (2) The relief is set out in section 414.
- (3) The Chapter contains provisions under which, in some circumstances—
  - (a) the individual's entitlement to some other reliefs may be restricted (see section 423), and
  - (b) the individual may be charged to income tax (see section 424).
- (4) See section 430 for bodies that are treated as charities for the purposes of this Chapter.
- (5) For related reliefs for charities see Part 10 of this Act, section 25(10) of FA 1990 and section 505 of ICTA.

#### **414 Relief for gifts to charity**

- (1) An individual who makes a gift to a charity which is a qualifying donation is entitled to the relief set out in subsection (2).
- (2) The Income Tax Acts have effect in their application to the individual for the tax year in which the gift is made as if—
  - (a) the gift had been made after deduction of income tax at the basic rate, and
  - (b) the basic rate limit (see section 20) were increased by an amount equal to the grossed up amount of the gift.
- (3) See subsection (7) of section 535 of ITTOIA 2005 (gains from contracts for life insurance etc: top slicing relief) for provision about how relief under this Chapter is to be ignored for the purpose of calculating relief under that section.

#### **415 Meaning of “grossed up amount”**

In this Chapter references to the grossed up amount of a gift are to the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.

#### **416 Meaning of “qualifying donation”**

- (1) A gift made to a charity by an individual is a qualifying donation for the purposes of this Chapter if—
  - (a) conditions A to G are met, and

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- (b) the individual gives the charity a gift aid declaration relating to the gift (see section 428).
- (2) Condition A is that the gift takes the form of a payment of a sum of money.
- (3) Condition B is that the payment is not subject to any condition as to repayment.
- (4) Condition C is that the payment is not a sum falling within section 713(3) of ITEPA 2003 (payroll deduction scheme).
- (5) Condition D is that the payment is not deductible in calculating the individual's income from any source.
- (6) Condition E is that the payment is not conditional on, associated with or part of an arrangement involving, the acquisition of property by the charity from the individual or a person connected with the individual.

An acquisition by way of gift is ignored for the purposes of this condition.

- (7) Condition F is that—
  - (a) there are no benefits associated with the gift, or
  - (b) there are benefits associated with the gift but the restrictions on those benefits are not breached.

See sections 417 to 421 for provision about benefits associated with gifts.

- (8) Condition G is that the gift is not a disqualified overseas gift (see section 422).

#### **417 Meaning of “benefits associated with a gift”**

A benefit is associated with a gift for the purposes of this Chapter if it is received by the individual who makes the gift, or a person connected with the individual, in consequence of making the gift.

#### *Restrictions on associated benefits*

#### **418 Restrictions on associated benefits**

- (1) For the purposes of section 416(7), the restrictions on benefits associated with a gift are breached if condition A or B is met.
- (2) Condition A is that the total value of the benefits associated with the gift exceeds the variable limit, which is—
  - (a) 25% of the amount of the gift, if the amount of the gift is £100 or less,
  - (b) £25, if the amount of the gift is more than £100 but not more than £1,000,
  - (c) [<sup>F94</sup>5%] of the amount of the gift, if the amount of the gift is more than £1,000.
- (3) Condition B is that the sum of—
  - (a) the total value of the benefits associated with the gift, and
  - (b) the total value of the benefits (if any) associated with each relevant prior gift,
 is more than [<sup>F95</sup>£500].
- (4) “Relevant prior gift” means a gift—

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- (a) which has already been made by the individual to the charity in the tax year, and
- (b) which is a qualifying donation.

(5) This section needs to be read with sections 419 to 421.

#### Textual Amendments

- F94** Word in s. 418(2)(c) substituted (with effect in accordance with s. 60(3) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 60\(1\)\(a\)](#)
- F95** Word in s. 418(3) substituted (with effect in accordance with s. 60(3) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 60\(1\)\(b\)](#)

### 419 Gifts and benefits linked to periods of less than 12 months

- (1) This section modifies the application of section 418(2) in relation to a gift if condition A, B, C or D is met.
- (2) Condition A is that a benefit associated with the gift relates to a period of less than 12 months.
- (3) Condition B is that a benefit associated with the gift consists of a right to receive benefits at intervals over a period of less than 12 months.
- (4) Condition C is that a benefit associated with the gift is one of a series of benefits which are—
  - (a) received at intervals, and
  - (b) associated with a series of gifts made at intervals of less than 12 months.
- (5) Condition D is that—
  - (a) a benefit associated with the gift is not one of a series of benefits received at intervals, and
  - (b) the gift is one of a series of gifts made at intervals of less than 12 months.
- (6) If condition A, B or C is met, then for the purposes of section 418(2)—
  - (a) the value of the benefit is taken to be the annual equivalent of its actual value, and
  - (b) the amount of the gift is taken to be the annual equivalent of its actual amount.
- (7) If condition D is met, the amount of the gift is taken for the purposes of section 418(2) to be the annual equivalent of its actual amount.
- (8) The annual equivalent of the value of a benefit, or of the amount of a gift, is calculated as follows.

#### Step 1

Multiply the value or amount by 365.

#### Step 2

If condition A or B is met in relation to the benefit (and neither condition C nor condition D is met in relation to it), divide the result by the number of days in the

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period of less than 12 months referred to in subsection (2) or (as the case may be) subsection (3).

If condition C or D is met in relation to the benefit, divide the result by the average number of days in the intervals of less than 12 months referred to in subsection (4)(b) or (as the case may be) subsection (5)(b).

### *Admission rights*

## **420 Disregard of certain admission rights**

- (1) A benefit associated with a gift is ignored for the purposes of this Chapter if the benefit consists of a relevant right of admission.
- (2) “Right of admission” means a right which—
  - (a) benefits the individual who makes the gift or that individual and one or more members of that individual's family (whether or not the right must be exercised by all of them at the same time),
  - (b) authorises admission to premises or property to which the public are admitted on payment of an admission fee, and
  - (c) authorises admission to those premises or that property without payment of the admission fee or on payment of a reduced fee.
- (3) A right of admission is a relevant right of admission if—
  - (a) conditions A and B are met in relation to it, and
  - (b) either condition C or condition D is met in relation to it.
- (4) Condition A is that the opportunity to make a gift and to receive the right of admission in consequence is available to the public.
- (5) Condition B is that 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 for its charitable purposes.
- (6) The property mentioned in subsection (5) includes, 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.
- (7) Condition C is that the right of admission applies, during a period of at least 12 months, at all times at which the public can obtain admission.
- (8) Condition D is that—
  - (a) a member of the public could purchase the same right of admission, and
  - (b) the amount of the gift is greater by at least 10% than the amount the member of the public would have to pay.
- (9) This section needs to be read with section 421.

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#### **421 Admission rights: supplementary**

- (1) This section applies for the purposes of section 420.
- (2) Condition C is to be treated as met even if the right does not apply on days which are specified by the charity as event days, provided no more than 5 days are so specified in relation to the applicable period.
- (3) The applicable period is—
  - (a) the period during which the right applies, in the case of a right which applies for a period of 12 months, or
  - (b) each calendar year during all or part of which the right applies, in the case of a right which applies for a period of more than 12 months.
- (4) An “event day” is a day on which an event is to take place on the premises to which the right relates.
- (5) In condition D the “same right of admission” means a right relating to the same property, classes of persons and periods of time as the right received in consequence of the gift.

#### *Disqualified overseas gifts*

#### **422 Disqualified overseas gifts**

- (1) This section applies for the purposes of section 416(8).
- (2) A gift is an “overseas gift” if—
  - (a) it is made by an individual to a charity at a time when the individual is neither UK resident nor in Crown employment, and
  - (b) ignoring condition G in section 416(8), it is a qualifying donation.
- (3) An overseas gift made by an individual in a tax year is a “disqualified overseas gift” if, as a result of the gift, the overseas gifts total is more than the individual's charged amount (see section 427).
- (4) In subsection (3) “overseas gifts total” means the sum of the grossed up amounts of all overseas gifts made by the individual in the tax year.
- (5) In this section “Crown employment” means employment under the Crown—
  - (a) which is of a public nature, and
  - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.

#### *Measures to ensure donor's liability not less than tax treated as deducted*

#### **423 Restriction of certain reliefs**

- (1) This section applies if—
  - (a) an individual makes one or more gifts to charities in a tax year which are qualifying donations, and
  - (b) amount A is greater than amount B.

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- (2) In this section—
- “amount A” means the total amount of the tax treated as deducted from the gifts under section 414, and
- “amount B” means the total amount of income tax and capital gains tax to which the individual is charged for the tax year (before applying this section).
- (3) For the purposes of this section, the total amount of income tax to which the individual is charged for the tax year is the amount calculated in accordance with section 425.
- (4) The individual's entitlement to the reliefs mentioned in subsection (5) is extinguished, so far as is necessary to ensure that the total amount of income tax and capital gains tax to which the individual is charged for the tax year (after applying this section)—
- (a) is equal to amount A, or
  - (b) if that is not possible, falls short of amount A by as little as possible.
- (5) The reliefs are—
- (a) an allowance under Chapter 2 of Part 3 of this Act or section 257 or 265 of ICTA (personal allowance and blind person's allowance),
  - (b) a tax reduction under Chapter 3 of Part 3 of this Act or section 257A, 257AB, 257BA or 257BB of ICTA (tax reductions for married couples and civil partners),
  - (c) relief under section 457 or 458 of this Act or section 266(7) of ICTA (payments to trade unions and police organisations), and
  - (d) a tax reduction under section 459 of this Act or section 273 of ICTA (payments for benefit of family members).

## 424 Charge to tax

- (1) Income tax is charged under this section if—
- (a) an individual makes one or more gifts to charity in a tax year which are qualifying donations, and
  - (b) amount A is greater than amount C.
- (2) In this section—
- “amount A” means the total amount of the tax treated as deducted from the gifts under section 414, and
- “amount C” means the sum of—
- a) the amount of income tax to which the individual is charged for the tax year, and
  - b) [<sup>F96</sup>the amount of capital gains tax to which the individual would be chargeable for the tax year if the following were ignored—
    - (i) any relief under section 788 of ICTA
    - (ii) any relief under section 790(1) of ICTA (relief for foreign tax where no double taxation arrangements).]
- (3) For the purposes of this section, the total amount of income tax to which the individual is charged for the tax year is the amount calculated in accordance with section 425, after taking into account any restriction of relief under section 423.
- (4) The amount of the tax charged under this section is equal to the difference between amount A and amount C.



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- (5) Tax charged under this section is charged for the tax year in which the gift or gifts are made.
- (6) The person liable for any tax charged under this section is the individual.

#### Textual Amendments

**F96** Words in s. 424(2) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), **art. 4(3)**

### **425 Total amount of income tax to which individual charged for a tax year**

- (1) For the purposes of sections 423 and 424, the total amount of income tax to which an individual is charged for a tax year is the amount calculated as follows.
- (2) Calculate the individual's liability to income tax for the tax year in accordance with section 23, as modified by subsection (3).
- (3) In applying section 23—
  - (a) at Step 6, ignore any tax reductions to which the individual is entitled for the tax year under a provision listed in subsection (4), and
  - (b) ignore Step 7.
- (4) The tax reductions to be ignored are tax reductions under—
  - (a) section 453 (qualifying maintenance payments),
  - (b) section 788 of ICTA (double taxation arrangements: relief by agreement), or
  - (c) section 790(1) of ICTA (relief for foreign tax where no double taxation arrangements).
- (5) From the amount calculated in accordance with subsections (2) to (4) deduct—
  - (a) any tax treated as having been paid under—
    - (i) section 399(2) or 400(2) of ITTOIA 2005 (distributions from UK resident companies etc on which there is no tax credit),
    - (ii) section 414(1) of that Act (stock dividend income),
    - (iii) section 421(1) of that Act (release of loan to participator in close company),
    - (iv) section 530(1) of that Act (gains from contracts for life insurance), or
    - (v) section 685A(3) of that Act (settlor-interested settlements), and
  - (b) any tax treated as deducted from estate income under section 656(3) or 657(4) of ITTOIA 2005, so far as that income is treated under section 679 of that Act as paid from sums within section 680(3)(b) or (4) of that Act.
- (6) For the purposes of this section a person is treated as being entitled to a tax reduction under section 788 of ICTA if the person is entitled to credit against income tax under double taxation arrangements.

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### *Election to carry back relief*

#### **426 Election by donor: gift treated as made in previous tax year**

- (1) If—
  - (a) an individual makes a gift to a charity that is a qualifying donation, and
  - (b) the condition in subsection (2) is met,
 the individual may elect to be treated as if the gift had been made in the previous tax year (“year P”).
- (2) The condition is that the individual's charged amount for year P (see section 427) is at least equal to the increased total of gifts.
- (3) If an election is made, sections 414 and 423 to 425 have effect in relation to the individual as if the gift were a qualifying donation made by the individual in year P.
- (4) The increased total of gifts is the sum of—
  - (a) the grossed up amount of the gift, and of any gifts that are the subject of the same election or an election made at the same time,
  - (b) the sum of the grossed up amounts of any gifts to charities made by the individual in year P which—
    - (i) are qualifying donations, and
    - (ii) are not themselves treated as made in the tax year before year P because of an election under this section, and
  - (c) the sum of the grossed up amounts of any gifts which, as a result of an earlier election under this section, are treated as made in year P.
- (5) The grossed up amount of the gifts mentioned in paragraphs (a) and (c) of subsection (4) is to be determined as if the gifts were made in year P.
- (6) An election must be made—
  - (a) on or before the date on which the individual delivers a return for year P under section 8 of TMA 1970 (personal return), and
  - (b) not later than the normal self-assessment filing date for year P.
- (7) An election does not affect the position of the recipient of the gift (see section 520 (gifts to charitable trusts: income tax treated as paid) and section 25(10) of FA 1990 (gifts to charitable companies)).
- (8) This section does not apply to gifts which are treated as qualifying donations under section 429 (giving through self-assessment return).

### *Supplementary*

#### **427 Meaning of “charged amount”**

- (1) For the purposes of this Chapter, an individual's charged amount is the amount calculated as follows.
- (2) Calculate the amount of the individual's modified net income for year X (see section 1025).

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(3) Calculate the amount on which the individual is chargeable to capital gains tax for year X.

(4) Add together the amounts calculated under subsections (2) and (3).

The result is the individual's charged amount for year X.

## **428 Meaning of “gift aid declaration”**

(1) In this Chapter “gift aid declaration” means a declaration which—

- (a) is given in the manner specified by regulations made by the Commissioners for Her Majesty's Revenue and Customs, and
- (b) contains any information and any statements required by the regulations.

(2) The regulations may provide for declarations—

- (a) to have effect,
- (b) to cease to have effect, or
- (c) to be treated as never having had effect,

in any circumstances and for any purposes specified by the regulations.

(3) The regulations may—

- (a) require charities to keep records with respect to declarations received from individuals, and
- (b) make different provision for declarations made in a different manner.

## **429 Giving through self-assessment return**

(1) This section applies if—

- (a) as a result of a personal return for a tax year being made by an individual, a tax repayment for one or more tax years falls to be made to the individual, and
- (b) conditions A and B are met.

(2) Condition A is that the personal return contains a single direction, in the form specified in the return, requiring—

- (a) the whole of the tax repayment, or so much of it as does not exceed a specified amount, to be paid on the individual's behalf as a gift to a single listed charity which is specified in the return, and
- (b) the gift to be treated as a qualifying donation for the purposes of this Chapter.

(3) Condition B is that the gift meets Conditions A to G mentioned in section 416.

(4) The gift is to be treated for the purposes of this Chapter as a qualifying donation made by the individual at the time the payment is received by the charity.

(5) In this section—

“listed charity” means a charity which, at the time the personal return is made, is included (at the request of the charity) in a list maintained for the purposes of this section by the Commissioners for Her Majesty's Revenue and Customs,

“personal return” means a return under section 8 of TMA 1970,

“tax repayment” means a repayment (after any set-off that falls to be made against the individual's liabilities) of either or both of—

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- (a) income tax or amounts paid on account of income tax, and
- (b) capital gains tax,

and, for the purposes of subsection (2)(a), includes any repayment supplement (within the meaning of section 824 of ICTA or section 283 of TCGA 1992).

#### **430 “Charity” to include exempt bodies**

- (1) In this Chapter “charity” includes—
  - (a) the Trustees of the National Heritage Memorial Fund,
  - (b) the Historic Buildings and Monuments Commission for England,
  - (c) the National Endowment for Science, Technology and the Arts, and
  - (d) a club that is registered as a community amateur sports club for the purposes of Schedule 18 to FA 2002.
- (2) For the purposes of the application of section 414(1) in relation to clubs that are charities as a result of subsection (1)(d) of this section, membership fees are not gifts.

### **CHAPTER 3**

#### **GIFTS OF SHARES, SECURITIES AND REAL PROPERTY TO CHARITIES ETC**

##### *Entitlement to relief*

#### **431 Relief for gifts of shares, securities and real property to charities etc**

- (1) An individual who disposes of the whole of the beneficial interest in a qualifying investment (see section 432) to a charity is entitled to relief if—
  - (a) the disposal is otherwise than by way of a bargain made at arm's length, and
  - (b) the individual makes a claim.
- (2) The relief is given by deducting the relievable amount in calculating the individual's net income for the tax year in which the disposal is made (see Step 2 of the calculation in section 23).
- (3) For the calculation of the relievable amount, see section 434.
- (4) If the qualifying investment is a qualifying interest in land (see section 433), this section is subject to—
  - section 441 (certificates),
  - section 442 (qualifying interests in land held jointly),
  - section 443 (calculation of relievable amount where joint disposal), and
  - section 444 (disqualifying events).
- (5) See section 446 for bodies that are treated as charities for the purposes of this Chapter.
- (6) See subsection (7) of section 535 of ITTOIA 2005 (top slicing relief) for provision about how relief under this Chapter is to be ignored for the purpose of calculating relief under that section.

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## 432 Meaning of “qualifying investment”

(1) In this Chapter “qualifying investment” means—

- (a) shares or securities which are listed [<sup>F97</sup>on a recognised stock exchange or dealt in on any designated market in the United Kingdom],
- (b) units in an authorised unit trust,
- (c) shares in an open-ended investment company,
- (d) an interest in an offshore fund, and
- (e) a qualifying interest in land.

(2) In this section—

[<sup>F98</sup>“designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of subsection (1)(a),]

“offshore fund” has the same meaning as in Chapter 5 of Part 17 of ICTA (see sections 756A to 756C of that Act), and

“open-ended investment company” is to be read in accordance with section 468A(2) to (4) of ICTA.

[<sup>F99</sup>(3) An order under subsection (2) may—

- (a) designate a market by name or by reference to any class or description of market, and
- (b) vary or revoke a previous order under that subsection.]

### Textual Amendments

**F97** Words in s. 432(1)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(10\)\(a\)](#)

**F98** Words in s. 432(2) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(10\)\(b\)](#)

**F99** S. 432(3) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(10\)\(c\)](#)

## 433 Meaning of “qualifying interest in land”

(1) In this Chapter “qualifying interest in land” means—

- (a) a freehold interest in land in the United Kingdom, or
- (b) a leasehold interest in land in the United Kingdom which is a term of years absolute.

This is subject to subsections (2) to (5).

(2) Subsection (3) applies if an individual with a beneficial interest in a freehold or leasehold interest mentioned in subsection (1)(a) or (b) makes a disposal to a charity of—

- (a) the whole of the beneficial interest, and
- (b) an easement, servitude, right or privilege so far as benefiting the land in question.

(3) The disposal mentioned in subsection (2)(b) is regarded for the purposes of this Chapter as a disposal by the individual of the whole of the individual's beneficial interest in a qualifying interest in land separate from the disposal mentioned in subsection (2)(a).

(4) If an individual who has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute to a charity of the whole or part of that land,

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the grant of the lease is regarded for the purposes of this Chapter as a disposal by the individual of the whole of the beneficial interest in the leasehold interest so granted.

- (5) Neither an agreement to acquire a freehold interest nor an agreement for a lease is a qualifying interest in land.
- (6) In the application of this section to Scotland—
  - (a) references to a freehold interest in land are to the interest of the owner,
  - (b) references to a leasehold interest in land which is a term of years absolute are to a tenant's right over or interest in a property subject to a lease,
  - (c) references to an agreement for a lease do not include missives of let that constitute an actual lease, and
  - (d) in subsection (4) the reference to granting a lease for a term of years absolute is to granting a lease.

#### *Amount of relief*

### **434 The relievable amount**

- (1) If the disposal is a gift, the relievable amount is given by the formula—

$$V + IC - B$$

where—

V is the value of the net benefit to the charity at, or immediately after, the time when the disposal is made, whichever is less,

IC is the amount of the incidental costs of making the disposal to the individual making it, and

B is the total value of any benefits received in consequence of making the disposal by the individual making the disposal or a person connected with the individual.

- (2) If the disposal is at an undervalue, the relievable amount is given by the formula—

$$E + C - B$$

where—

E is the amount (if any) by which V (as defined in subsection (1)) exceeds the amount or value of the consideration for the disposal,

C is given by subsection (4), and

B is as defined in subsection (1).

- (3) But if the amount given by the formula in subsection (1) or (2) is a negative amount, the relievable amount is nil.

- (4) C is found by taking the following steps.

*Step 1*

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Calculate the consideration for which the disposal is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act (in case of disposal to charity etc, consideration to be such that no gain or loss accrues).

#### *Step 2*

Find the excess (if any) of the amount calculated at Step 1 over the amount or value of the consideration for the disposal.

If there is such an excess, C is the amount of that excess or, if less, the amount of the incidental costs of making the disposal to the individual making it.

If there is no such excess, C is nil.

- (5) This section needs to be read with—
- (a) section 435 (incidental costs of making disposal),
  - (b) section 436 (consideration), and
  - (c) sections 437 to 440 (value of net benefit to charity).

### **435 Incidental costs of making disposal**

References in section 434 to the incidental costs of making the disposal to the individual making it are to—

- (a) fees, commission or remuneration paid for the professional services of a surveyor, valuer, auctioneer, accountant, agent or legal adviser which are wholly and exclusively incurred by the individual for the purposes of the disposal,
- (b) costs of transfer or conveyance wholly and exclusively incurred by the individual for the purposes of the disposal,
- (c) costs of advertising to find a buyer, and
- (d) costs reasonably incurred in making any valuation or apportionment required for the purposes of this Chapter.

### **436 Consideration**

- (1) For the purposes of the formula in section 434(2) consideration for the disposal is brought into account—
- (a) without any discount for postponement of the right to receive any part of it,
  - (b) in the first instance, without regard to a risk of any part of it being irrecoverable, and
  - (c) in the first instance, without regard to the right to receive any part of it being contingent.
- (2) If—
- (a) any part of the consideration so brought into account subsequently proves to be irrecoverable, and
  - (b) a claim is made,
- such adjustment as is required in consequence must be made.
- (3) An adjustment under subsection (2) may be made by way of discharge or repayment of tax or otherwise.

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### *Value of net benefit to charity*

#### **437 Value of net benefit to charity**

- (1) For the purposes of this Chapter the value of the net benefit to a charity is—
  - (a) the market value of the qualifying investment, or
  - (b) if the charity is, or becomes, subject to a disposal-related obligation, the market value of the qualifying investment reduced by the total amount of the disposal-related liabilities of the charity.
- (2) This section is supplemented by—
  - section 438 (market value of qualifying investments),
  - section 439 (meaning of “disposal-related obligation”), and
  - section 440 (meaning and amount of “disposal-related liability”).

#### **438 Market value of qualifying investments**

- (1) The market value of a qualifying investment for the purposes of this Chapter is determined in accordance with sections 272 to 274 of TCGA 1992 (subject to Part 1 of Schedule 11 to that Act).
- (2) But, in the case of an interest in an offshore fund for which separate buying and selling prices are published regularly by the managers of the fund, the market value for the purposes of this Chapter is equal to the buying price (that is the lower price) published on—
  - (a) the day of the disposal, or
  - (b) if none were published on that day, on the latest day on which the prices were published before that day.

#### **439 Meaning of “disposal-related obligation”**

- (1) In this Chapter an obligation is a “disposal-related obligation”, in relation to a qualifying investment, if condition A or condition B is met in relation to it.
- (2) The obligation may be to any person (whether or not the individual making the disposal or a person connected with the individual).
- (3) Condition A is that 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.
- (4) Condition B 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 disposal-related investment.
- (5) In applying condition A, all the circumstances must be taken into account (including, in particular, the difference in the value of the net benefit to the charity calculated under section 437(1)(a) and that value calculated under section 437(1)(b)).
- (6) In subsection (4) “disposal-related investment” means any of the following—
  - (a) an asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount),
  - (b) an asset derived from, or representing, the qualifying investment, whether in whole or in part and whether directly or indirectly, and



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- (c) an 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.
- (7) In this Chapter “obligation” includes a reference to each of the following—
  - (a) a scheme, arrangement or understanding of any kind, whether or not legally enforceable, and
  - (b) a series of obligations (whether or not between the same parties).

#### **440 Meaning and amount of “disposal-related liability”**

- (1) In this Chapter a liability is a “disposal-related liability” in the case of a qualifying investment if it is a liability of the charity under a disposal-related obligation in relation to the qualifying investment.
- (2) If the disposal-related obligation is contingent, the amount to be brought into account for the purposes of section 437 at any time in respect of the disposal-related liability, so far as contingent, is—
  - (a) if the contingency occurs, the amount or value of the liability actually incurred in consequence of the occurrence of the contingency, or
  - (b) if the contingency does not occur, nil.

#### *Special provisions about qualifying interests in land*

#### **441 Certificate required from charity**

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) No individual may make a claim for relief under this Chapter unless the individual has received a certificate given by or on behalf of the charity.
- (3) The certificate must—
  - (a) describe the qualifying interest in land,
  - (b) specify the date of the disposal, and
  - (c) state that the charity has acquired the qualifying interest in land.

#### **442 Qualifying interests in land held jointly**

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) It applies if two or more persons (“the owners”)—
  - (a) are jointly beneficially entitled to the qualifying interest in land, or
  - (b) are, taken together, beneficially entitled in common to the qualifying interest in land.
- (3) Relief under this Chapter is available if—
  - (a) at least one of the owners is an individual, and
  - (b) all the owners dispose of the whole of their beneficial interests in the qualifying interest in land to the charity.
- (4) Relief under this Chapter is available to each of the owners who is an individual.

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- (5) The amount of relief under this Chapter to be given to an individual is such share of the relievable amount as is allocated to the individual by an agreement made between those owners who are—
- (a) individuals, or
  - (b) qualifying companies.
- (6) A company is a qualifying company if—
- (a) it is not itself a charity, and
  - <sup>F100</sup>(b) .....
- (7) If one or more of the owners is not an individual—
- (a) for the purpose of determining whether the owners' beneficial interests are disposed of as mentioned in subsection (3)(b) of this section, subsections (2) to (4) of section 433 apply as if references to an individual included a reference to a person who is not an individual, and
  - (b) the total amount of relief given under this Chapter and section 587B of ICTA as a result of the disposal of the qualifying interest in land is not to exceed the relievable amount.

#### Textual Amendments

**F100** S. 442(6)(b) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(10\)](#)

### 443 Calculation of relievable amount where joint disposal of interest in land

- (1) This section applies for the purpose of calculating the relievable amount in a case where relief under this Chapter is available as a result of section 442(3).
- (2) Calculate the relievable amount as if—
- (a) the owners were a single individual, and
  - (b) the disposals of the owners' beneficial interests were a single disposal by that single individual of the whole of the beneficial interest in the qualifying interest in land.
- (3) In particular, calculate the consideration mentioned at Step 1 in section 434(4) by—
- (a) calculating, for each owner, the consideration for which the disposal of the owner's beneficial interest is treated as made for the purposes of TCGA 1992 as a result of section 257(2)(a) of that Act, and
  - (b) adding together all the consideration calculated under paragraph (a).
- (4) Subsection (5) applies if one or more of the owners is neither—
- (a) an individual, nor
  - (b) a qualifying company (see section 442(6)).
- (5) In calculating the relievable amount make just and reasonable adjustments to reduce the relievable amount to reflect the fact that relief under this Chapter or section 587B of ICTA is not available to that owner or to those owners.

<sup>F101</sup>(6) .....

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#### Textual Amendments

**F101** S. 443(6) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(10\)](#)

### 444 Disqualifying events

- (1) This section applies if the qualifying investment is a qualifying interest in land.
- (2) If a disqualifying event occurs at any time in the provisional period, the following are treated as never having been entitled to relief under this Chapter in respect of the disposal of the qualifying interest in land—
  - (a) in a case to which section 442 does not apply, the individual who made the disposal, or
  - (b) in a case to which section 442 applies, each individual who is an owner.
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (2).
- (4) A disqualifying event occurs if a person mentioned in subsection (5) becomes, otherwise than for full consideration in money or money's worth—
  - (a) entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  - (b) party to an arrangement under which the person enjoys some right in relation to all or part of that land.
- (5) The persons are—
  - (a) in a case to which section 442 does not apply—
    - (i) the individual who made the disposal, or
    - (ii) a person connected with that individual, and
  - (b) in a case to which section 442 applies—
    - (i) a person who is an owner, or
    - (ii) a person connected with such a person.
- (6) A disqualifying event does not occur if a person becomes entitled to an interest or right as mentioned in subsection (4)(a) as a result of a disposition of property on death (whether the disposition is effected by will, under the law relating to intestacy or otherwise).
- (7) “The provisional period” is the period beginning with the date of the disposal of the qualifying interest in land and ending with the fifth anniversary of the normal self-assessment filing date for the tax year in which the disposal was made.

#### Supplementary

### 445 Prohibition against double relief

- (1) If a claim is made for relief under this Chapter in respect of a disposal—
  - (a) section 108 of ITTOIA 2005 (gifts of trading stock to charities etc) does not apply in relation to the disposal, and
  - (b) no relief in respect of the disposal is allowable under any other provision of the Income Tax Acts.

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- (2) For the effect on capital gains tax or corporation tax on chargeable gains where an individual is entitled to relief under this Chapter, see section 257(2A) to (2C) of TCGA 1992 (gifts to charities etc).

#### **446 “Charity” to include exempt bodies**

In this Chapter “charity” includes—

- (a) the Trustees of the National Heritage Memorial Fund,
- (b) the Historic Buildings and Monuments Commission for England, and
- (c) the National Endowment for Science, Technology and the Arts.

## **CHAPTER 4**

### ANNUAL PAYMENTS AND PATENT ROYALTIES

#### **447 Overview of Chapter**

- (1) This Chapter gives relief for some of the payments from which sums representing income tax must be deducted under Chapter 6 of Part 15 (deduction from annual payments and patent royalties).
- (2) For the payments which attract relief, see sections 448 and 449.

#### **448 Relief for individuals**

- (1) This section applies to a payment made in a tax year if—
- (a) the person who makes it is an individual,
  - (b) a sum representing income tax is required by section 900(2) or 903(5) (deduction from annual payments and patent royalties) to be deducted from it, and
  - (c) the payment is not deductible in calculating the individual's income from any source.
- (2) The individual is entitled to relief for the tax year equal to the gross amount of the payment.
- (3) But this is subject to the restrictions in subsection (4) and section 451.
- (4) The total amount of relief given under this section to an individual for a tax year cannot be greater than the amount of the individual's modified net income for the tax year (see section 1025).
- (5) The relief is given by deducting the amount of the relief in calculating the individual's net income for the tax year (see Step 2 of the calculation in section 23).

#### **449 Relief for other persons**

- (1) This section applies to a payment made in a tax year if—
- (a) the person who makes it is not an individual,

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- (b) a sum representing income tax is required by section 901(3) or 903(6) (deduction from annual payments and patent royalties) to be deducted from it, and
  - (c) the payment is not deductible in calculating the person's income from any source.
- (2) The person who makes the payment is entitled to relief for the tax year equal to the gross amount of the payment.
- (3) But this is subject to the restrictions in subsections (4) and (5) and section 451.
- (4) Relief is not given for the payment so far as it is ineligible for relief (see section 450).
- (5) The total amount of relief given under this section to a person for a tax year cannot be greater than the amount of the person's modified net income for the tax year (see section 1025).
- (6) The relief is given by deducting the amount of the relief in calculating the person's net income for the tax year (see Step 2 of the calculation in section 23).

#### **450 Other persons: payments ineligible for relief**

- (1) This section sets out the circumstances in which a payment to which section 449 applies, or part of it, is ineligible for relief.
- (2) The payment is ineligible for relief if, or so far as, it can lawfully be made only out of—
  - (a) capital, or
  - (b) income that is exempt from income tax.
- (3) If the payment or any part of it is charged to capital, the payment or that part is ineligible for relief.
- (4) If—
  - (a) the person who makes the payment treats it or any part of it as made out of income that is exempt from income tax, and
  - (b) the rights or obligations of any person are or may in the future be different from what they would have been if the payment or part had not been so treated,the payment, or the part concerned, is ineligible for relief.
- (5) If the payment or a part of it is not ultimately borne by the person who makes it, the payment or the part concerned is ineligible for relief.
- (6) But subsection (5) does not apply to a payment or part of a payment if—
  - (a) the person who makes the payment is liable to income tax on an amount, and
  - (b) it is because the person receives that amount or benefits from it in some other way that the payment or the part concerned is not ultimately borne by that person.

#### **451 Special rule for persons affected by section 733 of ICTA**

- (1) This section applies if—
  - (a) interest payable to a person in respect of securities (“the affected income”) is attributable to a tax year,

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- (b) because of section 733(1) of ICTA (dividend buying etc: persons entitled to exemptions), some part of the affected income is not exempt from income tax, and
  - (c) the person makes one or more relivable payments in the tax year which are qualifying annual payments.
- (2) Relief under this Chapter for those payments is given only for—
- (a) the sum of the gross amounts of the payments, or
  - (b) if less, the amount of the person's non-affected income.
- (3) The person's non-affected income is—
- (a) the person's modified net income for the tax year (see section 1025), less
  - (b) the affected income.
- (4) Apply this section before working out the result of section 448(4) or 449(5).
- (5) In this section—
- “interest” and “securities” are to be read in accordance with section 731(9) of ICTA,
  - “relivable payment” means a payment to which section 448 or 449 applies, and
  - “qualifying annual payment” has the same meaning as in Chapter 6 of Part 15 (see section 899).

#### **452 The gross amount of a payment**

References in this Chapter to the gross amount of a payment are to the amount of the payment before deduction of the sum representing income tax deductible from it under Chapter 6 of Part 15 (deduction from annual payments and patent royalties).

## **CHAPTER 5**

### **QUALIFYING MAINTENANCE PAYMENTS**

#### **453 Tax reduction for qualifying maintenance payments**

- (1) An individual who makes a claim is entitled to a tax reduction for a tax year in which any qualifying maintenance payments made by the individual fall due.
- (2) The amount of the tax reduction is 10% of—
  - (a) the total amount of qualifying maintenance payments made by the individual which fall due in the tax year, or
  - (b) if less, the amount specified in section 43 (tax reductions for married couples and civil partners: meaning of “the minimum amount”).
- (3) The tax reduction is given effect at Step 6 of the calculation in section 23.

#### **454 Meaning of “qualifying maintenance payment”**

- (1) For the purposes of section 453 a payment is a “qualifying maintenance payment” if conditions A to E are met.
- (2) Condition A is that the payment is a periodical payment made by—

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- (a) one of the parties to a marriage or civil partnership (including a marriage or civil partnership which has been dissolved or annulled) to or for the benefit of the other party and for the maintenance of the other party, or
  - (b) one parent of a child to the child's other parent for the maintenance of the child by the other parent or by one person to another for the maintenance by the other of a relevant child of theirs.
- (3) Condition B is that—
  - (a) in a case falling within subsection (2)(a), either of the parties to the marriage or civil partnership was born before 6 April 1935, and
  - (b) in a case falling within subsection (2)(b), either the person who made the payment, or the person to whom it is made, was born before that date.
- (4) Condition C is that the payment is made—
  - (a) under an order made by a court in a member State, or
  - (b) under a written agreement the law applicable to which is the law of a member State or of a part of a member State.
- (5) Condition D is that the payment is due at a time when—
  - (a) in a case falling within subsection (2)(a)—
    - (i) the two parties are not a married couple, or civil partners of each other, living together (see section 1011), and
    - (ii) the party to whom or for whose benefit the payment is made has not entered into a new marriage or a new civil partnership, and
  - (b) in a case falling within subsection (2)(b), the person making the payment and the person to whom the payment is made are not living together.
- (6) Condition E is that relief from tax in respect of the payment is not available to the person making it under any provision of the Income Tax Acts other than section 453.
- (7) In subsection (4) the reference to an order made by a court in a member State includes a reference to a maintenance calculation.
- (8) “Maintenance calculation” means—
  - (a) a maintenance calculation made under the Child Support Act 1991 (c. 48), or
  - (b) a maintenance assessment made under the Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)).
- (9) In this section—
  - “child” means a person under 21 years of age,
  - “periodical payment” does not include an instalment of a lump sum, and
  - “relevant child”, in relation to any two persons, means a child who (not being a child who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family.

#### **455 Child support maintenance payments**

- (1) Condition A in section 454(2) is treated as met in relation to a payment if—
  - (a) it is a periodical payment made under a maintenance calculation by any person,

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- (b) another person is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)), a parent of the child or children with respect to whom the calculation has effect,
  - (c) the calculation was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance calculation), and
  - (d) any of the conditions mentioned in subsection (2) is met.
- (2) The conditions are that—
- (a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991 by virtue of subsection (3)(a)(ii) of that section (collection of child support maintenance: payment to or through Secretary of State),
  - (b) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act (arrears of child support maintenance),
  - (c) the payment is made to the Department of Health, Social Services and Public Safety for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991 (S.I. 1991/2628 (N.I. 23)), by virtue of paragraph (3)(a)(ii) of that Article (collection of child support maintenance: payment to or through Department), or
  - (d) the payment is retained by the Department of Health, Social Services and Public Safety for Northern Ireland in accordance with regulations made under Article 38 of that Order (arrears of child support maintenance).
- (3) “Maintenance calculation” and “periodical payment” have the meanings given in section 454(8) and (9).

#### **456 Payments under orders for recovery of benefit etc**

- (1) Condition A in section 454(2) is treated as met in relation to a payment made by any person if—
- (a) it is a periodical payment made to the Secretary of State or to the Department of Health, Social Services and Public Safety for Northern Ireland, and
  - (b) it is made under a recovery of benefit order.
- (2) A “recovery of benefit order” is—
- (a) one made under section 106 of the Social Security Administration Act 1992 (c. 5) or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by any other person, or
  - (b) one made by virtue of section 23 of the Jobseekers Act 1995 (c. 18) or Article 25 of the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) (recovery of sums in respect of maintenance), in respect of an income-based jobseeker's allowance claimed by any other person.
- (3) In subsection (2) “income-based jobseeker's allowance” has the same meaning as in—
- (a) the Jobseekers Act 1995, or
  - (b) for Northern Ireland, the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)).
- (4) “Periodical payment” has the meaning given in section 454(9).



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## CHAPTER 6

### MISCELLANEOUS OTHER RELIEFS

#### *Payments for life insurance etc*

#### **457 Payments to trade unions**

- (1) An individual who makes a payment to a trade union in a tax year is entitled to relief for the tax year if—
  - (a) part of the payment (the “qualifying amount”) is attributable to the provision of superannuation, life insurance or funeral benefits,
  - (b) the individual meets the requirements of section 460 (residence etc), and
  - (c) the individual makes a claim.
- (2) The amount of the relief is equal to half the qualifying amount.
- (3) But the maximum amount of relief under this section to which an individual is entitled for a tax year is £100.
- (4) The relief is given by deducting the amount of the relief in calculating the individual's net income for the tax year (see Step 2 of the calculation in section 23).
- (5) “Trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

#### **458 Payments to police organisations**

- (1) An individual who makes a payment to a police organisation in a tax year is entitled to relief for the tax year if—
  - (a) part of the payment (the “qualifying amount”) is attributable to the provision of superannuation, life insurance or funeral benefits,
  - (b) the sum of the qualifying amounts for all the payments which the individual makes in the tax year is at least £20,
  - (c) the individual meets the requirements of section 460 (residence etc), and
  - (d) the individual makes a claim.
- (2) The amount of the relief is equal to half the qualifying amount.
- (3) But the maximum amount of relief under this section to which an individual is entitled for a tax year is £100.
- (4) The relief is given by deducting the amount of the relief in calculating the individual's net income for the tax year (see Step 2 of the calculation in section 23).
- (5) “Police organisation” means an organisation of persons in police service.

#### **459 Payments for benefit of family members**

- (1) An individual who pays a sum, or from whose earnings a sum is deducted, in a tax year is entitled to a tax reduction for the tax year if—
  - (a) the sum is paid or deducted under an Act or the individual's terms and conditions of employment,

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- (b) the sum is for the purpose of—
    - (i) securing a deferred annuity after the individual's death for the individual's surviving spouse or civil partner, or
    - (ii) making provision after the individual's death for the individual's children,
  - (c) the individual meets the requirements of section 460 (residence etc), and
  - (d) the individual makes a claim.
- (2) The amount of the tax reduction is equal to income tax at the basic rate on the total of all the sums paid or deducted in the tax year.
- (3) But the maximum amount of the tax reduction under this section to which an individual is entitled for a tax year is equal to income tax at the basic rate on £100.
- (4) A tax reduction under this section is given effect at Step 6 of the calculation in section 23.
- (5) There is no entitlement to a tax reduction under this section in respect of a contribution paid by any person under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4), or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (6) This section is also subject to sections 192 to 194 of FA 2004 (relief for pension contributions).
- (7) In this section “earnings” has the meaning given by section 62 of ITEPA 2003.

#### **460 Residence etc of claimants**

- (1) This section applies in relation to an individual who claims—
- (a) relief under section 457 or 458 (payments to trade unions and police organisations) for a tax year, or
  - (b) a tax reduction under section 459 (payments for benefit of family members) for a tax year.
- (2) The individual meets the requirements of this section if the individual—
- (a) is UK resident for the tax year, or
  - (b) meets the condition in subsection (3).
- (3) An individual meets the condition in this subsection if, at any time in the tax year, the individual—
- (a) is resident in the Isle of Man or the Channel Islands,
  - (b) has previously resided in the United Kingdom and is resident abroad for the sake of the health of—
    - (i) the individual, or
    - (ii) a member of the individual's family who is resident with the individual,
  - (c) is a person who is or has been employed in the service of the Crown,
  - (d) is employed in the service of any territory under Her Majesty's protection,
  - (e) is employed in the service of a missionary society, or

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- (f) is a person whose late spouse or late civil partner was employed in the service of the Crown.

### *Patent royalty receipts*

## **461 Spreading of patent royalty receipts**

- (1) A person who makes a claim is entitled to a tax reduction for a tax year in which the person receives a payment of a royalty or other sum if—
  - (a) the payment is in respect of the use of a patent,
  - (b) the use of the patent has extended over a period of two years or more, and
  - (c) the payment is one from which a sum representing income tax is required to be deducted under section 903.
- (2) The amount of the tax reduction is the difference between—
  - (a) the amount of income tax payable by the person in respect of the payment, and
  - (b) the total amount of income tax which would have been payable by the person in respect of the payment on the assumptions in subsection (3).
- (3) Those assumptions are that—
  - (a) the payment was made in a number of equal instalments at yearly intervals,
  - (b) the last instalment was paid on the date on which the payment was in fact made, and
  - (c) the number of instalments was the same as the number of complete years in the period over which the use of the patent extended, but subject to a maximum of 6.
- (4) The tax reduction is given effect at Step 6 of the calculation in section 23.

## **PART 9**

### **SPECIAL RULES ABOUT SETTLEMENTS AND TRUSTEES**

## **CHAPTER 1**

### **INTRODUCTION**

## **462 Overview of Part**

- (1) This Part sets out special rules about settlements and trustees.
- (2) Chapter 2 contains general provision about settlements and trustees, for example, definitions of expressions relating to settlements.
- (3) Chapter 3 provides for income tax to be charged at the dividend trust rate or at the trust rate on certain amounts included in the net income of the trustees of a settlement.
- (4) Chapter 4 provides—
  - (a) for expenses of the trustees of a settlement to be set against the trustees' trust rate income (see section 463(2)), and

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- (b) consequentially, for the amount of the trust rate income to be reduced.
- (5) Chapter 5 qualifies section 479 (which is in Chapter 3) in the case of the trustees of an approved share incentive plan.
- (6) Chapter 6 provides that the first slice of the trust rate income of the trustees of a settlement is not to be charged at the dividend trust rate or at the trust rate.
- (7) Chapter 7 deals with the treatment of payments made by the trustees of a settlement in the exercise of a discretion.

This affects the way the trustees and the recipients of such payments are taxed.

- (8) Chapter 8 deals with the treatment of expenses of the trustees of a settlement where income arising to the trustees is, before being distributed, the income of a person other than the trustees themselves.

This affects the way that other person is taxed on that income.

- (9) Chapter 9 deals with unauthorised unit trusts.
- (10) Chapter 10 deals with heritage maintenance settlements.
- (11) See also Part 10 for special rules about charitable trusts.
- (12) See also Chapter 4 of Part 2 of FA 2005 for provision about trusts with vulnerable beneficiaries.

### **463 Interpretation of Part**

- (1) In this Part—
  - “other income” means income which is neither dividend income nor savings income, and
  - “the trustees of a settlement” does not include personal representatives.
- (2) References in this Part to the trust rate income for a tax year of the trustees of a settlement are references to the trustees' net income for the tax year so far as it includes amounts on which income tax is charged at the dividend trust rate or at the trust rate (ignoring Chapters 4 and 6).

### **464 Scottish trusts**

- (1) This section applies if—
  - (a) income arises to trustees under a trust having effect under the law of Scotland,
  - (b) the trustees are UK resident, and
  - (c) a beneficiary under the trust (“B”) would have an equitable right in possession to the income if the trust had effect under the law of England and Wales.
- (2) B is treated for income tax purposes as having an equitable right in possession to the income (even though B has no such right under the law of Scotland).

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## CHAPTER 2

### GENERAL PROVISION ABOUT SETTLEMENTS AND TRUSTEES

#### *Overview*

#### **465 Overview of Chapter and interpretation**

- (1) This Chapter contains general provision about settlements and trustees.
- (2) Section 466 explains what is meant by references to settled property.
- (3) Sections 467 to 473 explain what is meant by references to a settlor in relation to a settlement.
- (4) Sections 474 to 476 treat the trustees of a settlement as a single and distinct person and set out rules in relation to the residence and ordinary residence of that person.
- (5) Section 477 relates to sub-fund elections under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (6) Section 478 is about references to settled property etc in regulations.
- (7) For the purposes of this Chapter property is derived from other property if—
  - (a) it derives (directly or indirectly and wholly or partly) from that other property or any part of that other property, and
  - (b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that other property or any part of that other property.
- (8) In this Chapter “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### *Settled property*

#### **466 Meaning of “settled property” etc**

- (1) This section applies for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) “Settled property” means any property held in trust other than property excluded by subsection (3).
- (3) Property is excluded for the purposes of subsection (2) if—
  - (a) it is held by a person as nominee for another person,
  - (b) it is held by a person as trustee for another person who is absolutely entitled to the property as against the trustee, or
  - (c) it is held by a person as trustee for another person who would be absolutely entitled to the property as against the trustee if that other person were not an infant or otherwise lacking legal capacity.
- (4) References, however expressed, to property comprised in a settlement are references to settled property.

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- (5) A person is absolutely entitled to property as against a trustee if the person has the exclusive right to direct how the property is to be dealt with (subject to the trustees' right to use the property for the payment of duty, taxes, costs or other outgoings).
- (6) References to a person who is or would be so entitled include references to two or more persons who are or would be jointly absolutely entitled as against the trustee.

### *Settlors*

#### **467 Meaning of “settlor” etc**

- (1) In the Income Tax Acts (except where the context otherwise requires) “settlor”, in relation to a settlement, means the person, or any of the persons, who has made the settlement.
- (2) In the Income Tax Acts (except where the context otherwise requires) a person is a settlor of property if—
  - (a) the property is settled property because of—
    - (i) the person's having made the settlement, or
    - (ii) an event which leads to the person being treated by this Chapter as having made the settlement, or
  - (b) the property derives from settled property within paragraph (a).
- (3) A person (“S”) is treated for the purposes of the Income Tax Acts as having made a settlement if—
  - (a) S has made or entered into the settlement (directly or indirectly), or
  - (b) the settled property, or property from which the settled property derives, is or includes property within subsection (4).
- (4) Property is within this subsection if—
  - (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
  - (b) immediately before S's death, the property was property of S—
    - (i) which was disposable property (see section 468), or
    - (ii) which represented S's severable share in any property to which S was beneficially entitled as joint tenant.
- (5) In particular, S is treated for the purposes of the Income Tax Acts as having made a settlement if—
  - (a) S has provided property for the purposes of the settlement (directly or indirectly), or
  - (b) S has undertaken to do that.
- (6) If a person (“A”) makes or enters into a settlement in accordance with reciprocal arrangements with another person (“B”)—
  - (a) B is treated for the purposes of the Income Tax Acts as having made the settlement, and
  - (b) A is not to be treated for the purposes of the Income Tax Acts as having made the settlement just because of the reciprocal arrangements.
- (7) This section needs to be read with sections 469 to 473.

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- (8) This section and sections 469 to 473 do not apply for the purposes of Chapter 5 of Part 5 of ITTOIA 2005 (amounts treated as income of settlors).

#### **468 Meaning of “disposable property”**

- (1) This section applies for the purposes of section 467(4)(b)(i).
- (2) Property is disposable if S could have disposed of it by S's will.
- (3) In working out whether any property could have been so disposed of—
  - (a) make the assumptions mentioned in subsection (4), and
  - (b) ignore the powers mentioned in subsection (5).
- (4) Assume that—
  - (a) S is of full age and capacity,
  - (b) the property is situated in England and Wales, and
  - (c) if S is not domiciled in the United Kingdom, S is domiciled in England and Wales.
- (5) The powers to be ignored are—
  - (a) any power of appointment giving S the right to dispose of the property, and
  - (b) any testamentary power conferred by statute to dispose of entailed interests.

#### **469 Person ceasing to be a settlor**

- (1) A person (“S”) who is a settlor in relation to a settlement ceases to be so when the following condition is met.
- (2) The condition is that—
  - (a) no property of which S is the settlor is comprised in the settlement,
  - (b) S has not undertaken to provide property (directly or indirectly) for the purposes of the settlement in the future, and
  - (c) S has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

#### **470 Transfers between settlements**

- (1) Section 471 applies in relation to a transfer of property from the trustees of one settlement (“settlement 1”) to the trustees of another settlement (“settlement 2”) if the transfer—
  - (a) is not for full consideration,
  - (b) is not by way of a bargain made at arm's length, and
  - (c) is not excluded by subsection (2).
- (2) A transfer of property is excluded for the purposes of subsection (1) if—
  - (a) it occurs only because of the assignment by a beneficiary under settlement 1 of an interest in that settlement to the trustees of settlement 2,
  - (b) it occurs only because of the exercise of a general power of appointment, or
  - (c) section 473(4) applies in relation to it.
- (3) In this section “transfer of property” means—

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- (a) a disposal of property by the trustees of settlement 1, and
  - (b) the acquisition by the trustees of settlement 2 of—
    - (i) property disposed of by the trustees of settlement 1, or
    - (ii) property created by the disposal.
- (4) For the purposes of subsection (3) there is an acquisition or disposal of property if there would be an acquisition or disposal of property for the purposes of TCGA 1992.

#### **471 Identification of settlor following transfer covered by section 470**

- (1) If there is a transfer of property in relation to which this section applies, then the following subsections apply for the purposes of the Income Tax Acts, except so far as, in those Acts, the context otherwise requires.
- (2) The settlor (or each settlor) of the property disposed of by the trustees of settlement 1 (“the disposed property”) is treated from the time of the disposal as having made settlement 2.
- (3) If there is more than one settlor of the disposed property, each of them is treated in relation to settlement 2 as the settlor of a proportionate part of the property acquired by the trustees of settlement 2 on the disposal.
- (4) So far as the disposed property—
  - (a) was provided for the purposes of settlement 1, or
  - (b) was derived from property so provided,
 the property acquired by the trustees of settlement 2 on the disposal is treated from the time of the disposal as having been provided for the purposes of settlement 2.
- (5) If as a result of subsection (4), property (“the transferred property”) is treated as having been provided for the purposes of settlement 2—
  - (a) the person who provided the disposed property, or the property from which it was derived, for the purposes of settlement 1 is treated as having provided the transferred property for the purposes of settlement 2, and
  - (b) if more than one person provided the disposed property, or the property from which it was derived, for the purposes of settlement 1, each of them is treated as having provided a proportionate part of the transferred property for the purposes of settlement 2.

#### **472 Settlor where property becomes settled because of variation of will etc**

- (1) This section applies if—
  - (a) a disposition of property following a person's death is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.
- (2) If property becomes settled property because of the variation (and would not, but for the variation, have become settled property), a person within subsection (3) is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) —
  - (a) as having made the settlement, and
  - (b) as having provided the property for the purposes of the settlement.
- (3) The persons within this subsection are—



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- (a) a person who immediately before the variation was entitled to the property, or to property from which it derived, absolutely as legatee,
  - (b) a person who immediately before the variation would have been so entitled if that person had not been an infant or otherwise lacking legal capacity,
  - (c) a person who, but for the variation, would have become so entitled, and
  - (d) a person who, but for the variation, would have become so entitled if that person had not been an infant or otherwise lacking legal capacity.
- (4) For the purposes of subsection (3)—
- (a) “legatee” includes a person taking property—
    - (i) under a testamentary disposition or on an intestacy or partial intestacy, whether beneficially or as trustee, or
    - (ii) under a donatio mortis causa, and
  - (b) a person who is a legatee as a result of paragraph (a)(ii) is treated as acquiring the property when the donor dies.
- (5) For the purposes of subsection (4)(a) property taken under a testamentary disposition or on an intestacy or partial intestacy includes any property appropriated by the personal representatives in or towards satisfaction of—
- (a) a pecuniary legacy, or
  - (b) any other interest or share in the property devolving under the disposition or intestacy.

#### **473 Deceased person as settlor where variation of will etc**

- (1) This section applies if—
- (a) a disposition of property following the death of a person (“D”) is varied, and
  - (b) section 62(6) of TCGA 1992 applies in relation to the variation.
- (2) If—
- (a) property would have become comprised in a settlement within subsection (3), but
  - (b) as a result of the variation, the property, or property derived from it, becomes comprised in another settlement,
- D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.
- (3) A settlement is within this subsection if—
- (a) it arose on D's death (whether by D's will or on D's intestacy or in any other way), or
  - (b) it was in existence immediately before D's death (whether or not D was a settlor in relation to it).
- (4) If—
- (a) immediately before the variation property is comprised in a settlement and is property of which D is a settlor, and
  - (b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,
- D is treated for the purposes of the Income Tax Acts (except where the context otherwise requires) as having made the other settlement.

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- (5) A settlement treated as made by D as a result of this section is treated for the purposes of the Income Tax Acts as made by D immediately before D's death.
- (6) But subsection (5) does not apply in relation to a settlement which arose on D's death.

### *Trustees*

#### **474 Trustees of settlement to be treated as a single and distinct person**

- (1) For the purposes of the Income Tax Acts (except where the context otherwise requires), the trustees of a settlement are together treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).
- (2) If different parts of the settled property in relation to a settlement are vested in different bodies of trustees, subsection (1) and sections 475 and 476 apply in relation to the different bodies as if they were all one body.
- (3) The cases covered by subsection (2) include cases where settled land (within the meaning of the Settled Land Act 1925 (c. 18)) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement.

#### **475 Residence of trustees**

- (1) This section applies for income tax purposes and explains how to work out, in relation to the trustees of a settlement—
  - (a) whether or not the single person mentioned in section 474(1) is UK resident, and
  - (b) whether or not that person is ordinarily UK resident.
- (2) If at a time either condition A or condition B is met, then at that time the single person is both UK resident and ordinarily UK resident.
- (3) If at a time neither condition A nor condition B is met, then at that time the single person is both non-UK resident and not ordinarily UK resident.
- (4) Condition A is met at a time if, at that time, all the persons who are trustees of the settlement are UK resident.
- (5) Condition B is met at a time if at that time—
  - (a) at least one person who is a trustee of the settlement is UK resident and at least one such person is non-UK resident, and
  - (b) a settlor in relation to the settlement meets condition C (see section 476).
- (6) If at a time a person (“T”) who is a trustee of the settlement acts as trustee in the course of a business which T carries on in the United Kingdom through a branch, agency or permanent establishment there, then for the purposes of subsections (4) and (5) assume that T is UK resident at that time.

#### **476 How to work out whether settlor meets condition C**

- (1) This section applies for the purpose of working out whether a settlor (“S”) in relation to a settlement meets condition C at a time.

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- (2) If—
- (a) the settlement arose on S's death (whether by S's will, on S's intestacy or in any other way), and
  - (b) immediately before S's death, S was UK resident, ordinarily UK resident or domiciled in the United Kingdom,
- then S meets condition C from the time of S's death until S ceases to be a settlor in relation to the settlement.
- (3) If—
- (a) the settlement is not within subsection (2)(a), and
  - (b) at a time when S made the settlement (or is treated for the purposes of the Income Tax Acts as making the settlement), S was UK resident, ordinarily UK resident or domiciled in the United Kingdom,
- then S meets condition C from that time until S ceases to be a settlor in relation to the settlement.
- (4) Further, if—
- (a) there is a transfer of property in relation to which section 471 applies,
  - (b) S is a settlor in relation to settlement 2 as a result of that section, and
  - (c) immediately before the disposal by the trustees of settlement 1, S meets condition C as a settlor in relation to settlement 1 as a result of subsection (2) or (3) or this subsection,
- then S meets condition C as a settlor in relation to settlement 2 from the time S becomes such a settlor until S ceases to be such a settlor.
- (5) “Settlement 1” and “settlement 2” are to be read in accordance with section 470(1).

#### *Sub-funds*

### **477 Sub-fund elections under Schedule 4ZA to TCGA 1992**

- (1) This section applies for the purposes of the Income Tax Acts (except so far as, in those Acts, the context otherwise requires) if the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to TCGA 1992.
- (2) The sub-fund settlement is treated as a settlement that is created at the relevant time.
- (3) Each trustee of the trusts on which property comprised in the sub-fund settlement is held is treated as a trustee of the sub-fund settlement.
- (4) A person (“T”) who is a trustee of the sub-fund settlement is treated, from the relevant time, as having ceased to be a trustee of the principal settlement unless T is also a trustee of trusts on which property comprised in the principal settlement is held.
- (5) A person (“T”) who is a trustee of the principal settlement is not to be treated as a trustee of the sub-fund settlement unless T is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- (6) The trustees of the sub-fund settlement are treated as having become, at the relevant time, absolutely entitled to the property comprised in that settlement as against the trustees of the principal settlement.
- (7) In this section—

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“principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,

“the relevant time” means the time when the sub-fund election is treated as having taken effect under paragraph 2 of that Schedule,

“sub-fund election” has the meaning given by paragraph 2 of that Schedule, and

“sub-fund settlement” has the meaning given by paragraph 1 of that Schedule.

### *Regulations*

#### **478 References to settled property etc in regulations**

For the purposes of regulations (whenever made) made under a provision of the Income Tax Acts—

- (a) references to settled property, a settlor or trustees are to be read in accordance with this Chapter, and
- (b) references to the trustees of a trust are to be read as references to the trustees of a settlement.

## **CHAPTER 3**

### SPECIAL RATES FOR TRUSTEES' INCOME

#### **479 Trustees' accumulated or discretionary income to be charged at special rates**

- (1) This section applies if—
  - (a) accumulated or discretionary income arises to the trustees of a settlement, and
  - (b) the income does not arise under a trust established for charitable purposes only.
- (2) Income tax is charged on the income at the rates referred to in this section instead of at the rates which would otherwise apply (for which see Chapter 2 of Part 2 (rates at which income tax is charged)).
- (3) Income tax is charged on the income at the dividend trust rate so far as the income is dividend income.
- (4) Otherwise, income tax is charged on the income at the trust rate.
- (5) Section 488 disapplies this section in cases relating to approved share incentive plans.

#### **480 Meaning of “accumulated or discretionary income”**

- (1) Income is accumulated or discretionary income so far as—
  - (a) it must be accumulated, or
  - (b) it is payable at the discretion of the trustees or any other person, and it is not excluded by subsection (3).
- (2) The cases covered by subsection (1)(b) include cases where the trustees have, or any other person has, any discretion over one or more of the following matters—

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- (a) whether, or the extent to which, the income is to be accumulated,
  - (b) the persons to whom the income is to be paid, and
  - (c) how much of the income is to be paid to any person.
- (3) Income is excluded for the purposes of subsection (1) so far as—
  - (a) before being distributed, it is the income of any person other than the trustees,
  - (b) it is income from property within subsection (4), or
  - (c) it is income from service charges [<sup>F102</sup>which are paid in respect of dwellings in the United Kingdom and are held on trust.]
- (4) Property is within this subsection if it—
  - (a) is held for the purposes of a superannuation fund to which section 615(3) of ICTA (superannuation funds relating to undertakings outside the UK) applies, but
  - (b) is not held as a member of a property investment LLP.
- [<sup>F103</sup>(5) In subsection (3)(c) “service charges” has the meaning given by section 18 of the Landlord and Tenant Act 1985 (but as if that section also applied in relation to dwellings in Scotland and Northern Ireland).]

#### Textual Amendments

**F102** Words in s. 480(3)(c) substituted (with effect in accordance with s. 65(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 65\(2\)](#)

**F103** S. 480(5) substituted for s. 480(5)(6) (with effect in accordance with s. 65(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 65\(3\)](#)

## 481 Other amounts to be charged at special rates for trustees

- (1) This section applies if—
  - (a) the trustees of a settlement are liable for income tax on an amount of a type set out in section 482,
  - (b) the trustees are not trustees of a unit trust scheme, and
  - (c) the amount is not income arising under a trust established for charitable purposes only.
- (2) Income tax is charged on the amount at one of the rates referred to in this section instead of at the rate which would otherwise apply (for which see Chapter 2 of Part 2 (rates at which income tax is charged)).

This is subject to subsection (5).
- (3) If the amount is within Type 1 as set out in section 482, income tax is charged on the amount at the dividend trust rate.
- (4) Otherwise, income tax is charged on the amount at the trust rate.
- (5) Income tax is not to be charged as mentioned in subsection (2) so far as the amount—
  - (a) is accumulated or discretionary income,
  - (b) would be accumulated or discretionary income apart from section 480(3)(a) or (c), or
  - (c) is income from property within subsection (6).

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- (6) Property is within this subsection if it is held for the purposes of a superannuation fund to which section 615(3) of ICTA (superannuation funds relating to undertakings outside the UK) applies.

## 482 Types of amount to be charged at special rates for trustees

The types of amount referred to in section 481 are as follows. *Type 1*

A payment—

- (a) which is made to the trustees or to which the trustees are entitled, and
- (b) which is made [<sup>F104</sup>by way of qualifying distribution] by a company on the redemption, repayment or purchase of shares in the company or on the purchase of rights to acquire such shares.

*Type 2*

Accrued income profits treated as made by the trustees under section 628(5) or 630(2).

*Type 3*

Income treated as arising to the trustees under section 761(1) of ICTA (offshore income gains).

*Type 4*

Income which the trustees are treated as receiving under section 68(2) or 71(4) of FA 1989 (which relate to employee share ownership trusts).

*Type 5*

A sum to which Chapter 4 of Part 3 of ITTOIA 2005 (which provides for certain amounts to be treated as receipts of a property business) applies.

*Type 6*

A profit in relation to which the trustees are liable for income tax under section 429 of ITTOIA 2005 (profits from deeply discounted securities).

*Type 7*

A gain in relation to which the trustees are liable for income tax under section 467 of ITTOIA 2005 (gains from contracts for life insurance etc), other than a gain to which subsection (7) of that section applies.

*Type 8*

A profit or gain in relation to which the trustees are liable for income tax under section 554 of ITTOIA 2005 (transactions in deposits).

*Type 9*

A profit or gain—

- (a) in relation to which the trustees are liable for income tax under section 557 of ITTOIA 2005 (disposals of futures and options), and
- (b) which does not meet any of conditions A to C in section 568 of ITTOIA 2005.

*Type 10*

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Proceeds in relation to which the trustees are liable for income tax under section 573 of ITTOIA 2005 (sales of foreign dividend coupons).

*Type 11*

Income treated as arising to the trustees under Chapter 3 of Part 13 of this Act (tax avoidance: transactions in land).

**Textual Amendments**

**F104** Words in s. 482 inserted (with effect in accordance with s. 55(3) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 55\(2\)](#)

**483 Sums paid by personal representatives to trustees**

- (1) This section applies if, during or at the end of the administration period for an estate—
  - (a) the personal representatives pay the trustees of a settlement a sum representing income of the personal representatives, and
  - (b) if this Chapter had applied to personal representatives, income tax would have been charged on that income at the dividend trust rate or at the trust rate.
- (2) The sum is treated as—
  - (a) being paid as income, and
  - (b) having borne income tax at the applicable rate.
- (3) In this section—

“administration period” has the meaning given by section 653 of ITTOIA 2005, and

“the applicable rate” means the rate referred to in section 663(1) of ITTOIA 2005 (the applicable rate for grossing up basic amounts of estate income).

**CHAPTER 4**

TRUSTEES' EXPENSES AND SPECIAL RATES FOR TRUSTEES

**484 Trustees' expenses to be set against trustees' trust rate income**

- (1) This section applies if the trustees of a settlement incur allowable expenses in a tax year (“the current tax year”).
- (2) The allowable expenses are to be set against the trustees' trust rate income for the current tax year in accordance with section 486.
- (3) That is to be done before working out whether section 491 applies in relation to the trustees for the current tax year.
- (4) So far as any of the trustees' trust rate income has an amount set against it in accordance with section 486, income tax is charged on it at the rate or rates which would apply apart from Chapter 3 (see Chapter 2 of Part 2).
- (5) Expenses are allowable for the purposes of this Chapter only so far as—

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- (a) they are expenses of the trustees, and
  - (b) they are properly chargeable to income, ignoring the express terms of the settlement.
- (6) Expenses are not allowable for the purposes of this Chapter if they are expenses which (apart from this section) have fallen, or may fall, to be taken into account for the purpose of calculating the trustees' liability to income tax for any tax year.

#### **485 Carry forward of unused expenses**

- (1) This section applies if (apart from this section) the trustees incur an allowable expense in a tax year prior to the current tax year (“the earlier tax year”).
- (2) For the purposes of this Chapter the trustees are treated as having incurred the allowable expense in the current tax year so far as conditions A and B are met in relation to the expense.
- (3) Condition A is that the allowable expense could not be set against the trustees' trust rate income for the earlier tax year only because the trustees' trust rate income was insufficient or they had no trust rate income.
- (4) Condition B is that the allowable expense has not been set against the trustees' trust rate income for a tax year prior to the current tax year as a result of this section.

#### **486 How allowable expenses are to be set against trust rate income**

- (1) Take the following steps to determine how the allowable expenses are to be set against the trustees' trust rate income for the current tax year.

##### *Step 1*

Reduce the allowable expenses by the proportion of those expenses (if any) which is excluded in accordance with section 487.

References at Steps 3 to 6 below to the allowable expenses are references to the expenses as so reduced.

##### *Step 2*

Identify the type or types of income which make up the trust rate income.

The possible types are dividend income, savings income and other income.

##### *Step 3*

If there is dividend income within subsection (2)—

- (a) gross up by reference to the dividend ordinary rate so much of the allowable expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough allowable expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the dividend income within subsection (2).

##### *Step 4*

If there are remaining expenses and there is dividend income not within subsection (2)

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- (a) gross up by reference to the dividend ordinary rate so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the dividend income not within subsection (2).

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3.

#### *Step 5*

If there are remaining expenses and there is savings income—

- (a) gross up by reference to the savings rate so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the savings income.

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3 or 4.

#### *Step 6*

If there are remaining expenses and there is other income—

- (a) gross up by reference to the basic rate so much of the remaining expenses as is necessary to give a result equal to the amount of that income, or
- (b) if there are not enough remaining expenses to give that result, gross them all up by reference to that rate.

The grossed up amount is set against the other income.

For the purposes of this step “the remaining expenses” are the allowable expenses so far as they have not been grossed up at Step 3, 4 or 5.

(2) Income is within this subsection so far as it is—

- (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
- (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
- (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company).

(3) If income tax would, apart from Chapter 3, be charged on any income mentioned at Steps 3 to 6 at a rate different to the rate mentioned at the step in question, for the purpose of setting any expenses against that income, gross up the expenses by reference to the different rate instead of at the rate mentioned.

## **487 Non-UK resident trustees**

- (1) This section applies if a proportion of the income arising to the trustees in the current tax year is untaxed income.
- (2) A proportion of the allowable expenses is excluded for the purposes of section 486.

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- (3) That proportion is the same as the proportion of the income arising to the trustees which is untaxed income.
- (4) For the purposes of this section the income arising to the trustees is untaxed income so far as they are not liable to income tax on it wholly or partly because they—
  - (a) have been non-UK resident, or
  - (b) have been treated as resident in a territory outside the United Kingdom under double taxation arrangements.
- (5) If the income tax charged on the income arising to the trustees is limited under Chapter 1 of Part 14 (limits on liability to income tax of non-UK residents), the untaxed income includes so much of the income so arising which is disregarded income (within the meaning of that Chapter) except so far as the disregarded income is within subsection (6).
- (6) The disregarded income is within this subsection so far as—
  - (a) sums representing income tax have been deducted from the income,
  - (b) sums representing income tax have been treated as deducted from or paid in respect of the income, or
  - (c) there are tax credits in respect of the income.

## CHAPTER 5

### SHARE INCENTIVE PLANS

#### **488     Application of section 479 to trustees of approved share incentive plans**

- (1) This section applies if—
  - (a) income arises to the trustees of an approved share incentive plan, and
  - (b) the income consists of dividends or other distributions in respect of shares held by the trustees in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met.
- (2) Section 479 applies in relation to the income only if and when condition A or condition B has been met.
- (3) Condition A is that—
  - (a) the applicable period in relation to the shares has ended, and
  - (b) that period came to an end without the shares being awarded to a participant in accordance with the plan.
- (4) Condition B is that the trustees disposed of the shares before the end of the applicable period in relation to the shares.
- (5) For the purpose of determining whether shares are awarded to a participant within the applicable period in relation to them, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) References in this section to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.

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#### **489 “The applicable period” in relation to shares**

- (1) This section sets out how the applicable period in relation to any shares (“the relevant shares”) is determined for the purposes of section 488.
- (2) The length of the applicable period depends on whether any shares in the relevant company were readily convertible assets at the time the relevant shares were acquired by the trustees.
- (3) If any were, the applicable period is the period of two years beginning with the acquisition date.
- (4) If none were, the applicable period is—
  - (a) the period of 5 years beginning with the acquisition date, or
  - (b) if within that period any shares in the relevant company become readily convertible assets, the period of two years beginning with the date on which they did so,whichever ends first.
- (5) Subsections (2) to (4) are subject to subsection (6).
- (6) If the relevant shares were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to ICTA (deduction for contribution to plan trust), the applicable period is the period of 10 years beginning with the acquisition date.
- (7) In this section—

“the acquisition date” means the date on which the trustees acquired the relevant shares,

“readily convertible assets” has, subject to subsection (8), the meaning given by sections 701 and 702 of ITEPA 2003, and

“the relevant company” means the company in which the relevant shares are shares.
- (8) In determining for the purposes of this section whether shares are readily convertible assets, ignore any market for the shares that—
  - (a) is created by virtue of the trustees acquiring shares for the purposes of the approved share incentive plan, and
  - (b) exists solely for the purposes of that plan.

#### **490 Interpretation of Chapter**

- (1) This Chapter forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (2) Therefore expressions used in this Chapter and contained in the index at the end of Schedule 2 to ITEPA 2003 have the meaning indicated by that index.
- (3) For the purposes of this Chapter shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.

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## CHAPTER 6

### TRUSTEES' FIRST SLICE OF TRUST RATE INCOME

#### 491 Special rates not to apply to first slice of trustees' trust rate income

- (1) If the trust rate income for a tax year of the trustees of a settlement is £1,000 or less, income tax is not charged on it at the dividend trust rate or at the trust rate.
- (2) If the trustees' trust rate income is more than £1,000, income tax is not charged on the first £1,000 of it at the dividend trust rate or at the trust rate.
- (3) Instead, income tax is charged on the trustees' trust rate income or the first £1,000 of it (as the case may be) at the rate or rates which would apply apart from Chapter 3 (see Chapter 2 of Part 2).
- (4) For the purposes of subsection (2) apply the following rules in determining the type or types of income that make up the first £1,000 of the trustees' trust rate income.

##### *Rule 1*

If the trustees' trust rate income includes amounts on which income tax would be charged at the basic rate apart from Chapter 3, treat those amounts as the lowest part of the trust rate income.

##### *Rule 2*

If the trustees' trust rate income includes amounts on which income tax would be charged at the dividend ordinary rate apart from Chapter 3, treat those amounts as the highest part of the trust rate income.

- (5) For the purposes of this section gains chargeable under Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life assurance etc) are treated as if they were savings income.
- (6) Amounts on which income tax is not to be charged at the dividend trust rate or at the trust rate as a result of Chapter 4 are excluded from the trustees' trust rate income for the purposes of this section.

#### 492 Cases where settlor has made more than one settlement

- (1) The application of section 491 in relation to the trustees of a settlement ("the relevant settlement") for a tax year is modified in accordance with subsection (2) if the settlor in relation to the relevant settlement has made one or more other current settlements.
- (2) References to £1,000 are to be read as references to—
  - (a) £200, or
  - (b) if greater, the settlor's threshold amount.
- (3) The settlor's threshold amount is the amount calculated by dividing £1,000 by the number of current settlements (including the relevant settlement) made by the settlor.
- (4) If there is more than one settlor in relation to the relevant settlement—
  - (a) calculate the threshold amount of each of them, and
  - (b) use the lowest of those threshold amounts for the purposes of subsection (2).

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- (5) A settlement is current if it is in existence at a time during the tax year.

## CHAPTER 7

### DISCRETIONARY PAYMENTS

#### 493 Discretionary payments by trustees

- (1) Sections 494 and 495 apply for income tax purposes if—
- (a) in a tax year the trustees of a settlement make an annual payment to a person (“the beneficiary”) in the exercise of a discretion (whether exercisable by the trustees or any other person),
  - (b) the trustees are UK resident for the tax year, and
  - (c) condition A or condition B is met.
- (2) Condition A is that what is paid to the beneficiary is, only because of the payment, income of the beneficiary for income tax or corporation tax purposes.  
“Income” does not include employment income.
- (3) Condition B is that the payment is treated for income tax purposes as the income of a settlor under section 629 of ITTOIA 2005 (income paid to relevant children of settlor).  
“Settlor” is to be read in accordance with section 620 of ITTOIA 2005.
- (4) The payment is referred to in sections 494 and 495 as “the discretionary payment”.
- (5) In this Chapter “payment” includes payment in money's worth.

#### 494 Grossing up of discretionary payment and payment of income tax

- (1) The discretionary payment is treated as if it were made after the deduction of a sum representing income tax at the trust rate on the grossed up amount of the discretionary payment.
- (2) The grossed up amount of the discretionary payment is the actual amount of the discretionary payment grossed up by reference to the trust rate.
- (3) The person mentioned in subsection (4) is treated as having paid income tax of an amount equal to the sum deducted as mentioned in subsection (1).
- (4) That person is—
- (a) if condition A in section 493 is met, the beneficiary, and
  - (b) if condition B in section 493 is met, the settlor.

#### 495 Statement about deduction of income tax

- (1) If the person who is treated as having paid income tax requests it in writing, the trustees must provide that person with a statement showing—
- (a) the grossed up amount of the discretionary payment,
  - (b) the sum deducted as mentioned in section 494(1), and
  - (c) the actual amount of the discretionary payment.
- (2) A statement under this section must be in writing.

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- (3) The duty to comply with a request under this section is enforceable by the person who made it.

#### **496 Income tax charged on trustees**

- (1) Income tax is charged for a tax year if—
- (a) in the tax year the trustees of a settlement make payments as a result of which income tax is treated as having been paid under section 494, and
  - (b) amount A is greater than amount B.
- (2) Amount A is the total amount of the income tax treated under section 494 as having been paid.
- (3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497).
- (4) The amount of the tax charged under this section is equal to the difference between amounts A and B.
- (5) The trustees are liable for the tax.

#### **497 Calculation of trustees' tax pool**

- (1) Take the following steps to calculate the amount of the trustees' tax pool available for a tax year ("the current tax year").

This is subject to subsections (2) and (3).

##### *Step 1*

Take the amount of the trustees' tax pool available for the previous tax year and deduct from that amount (but not so that it goes below nil) the total amount of income tax treated under section 494 as having been paid as a result of payments made by the trustees in the previous tax year.

##### *Step 2*

Add together all amounts of income tax for which the trustees are liable for the current tax year and which are of a type set out in section 498.

##### *Step 3*

Add the sum calculated at Step 2 to the amount resulting from Step 1.

- (2) If the trustees were non-UK resident for the previous tax year, references in subsection (1) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.
- (3) If—
- (a) the current tax year is the tax year during which the settlement is established, or
  - (b) the trustees have been UK resident for no tax year prior to the current tax year,
- ignore Steps 1 and 3 and, accordingly, the trustees' tax pool available for the current tax year is the sum calculated at Step 2.

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## **498 Types of income tax for the purposes of section 497**

(1) The types of amount referred to at Step 2 in section 497 are as follows.

### *Type 1*

The amount of any tax on income (other than income of a kind mentioned below in relation to Type 1<sup>F105</sup> 2, 3 or 3A]) charged at the dividend trust rate or at the trust rate.

### *Type 2*

The amount of tax at the nominal rate on any income which is—

- (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
- (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
- (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company),

and on which tax is charged at the dividend trust rate as a result of section 479.

### *Type 3*

The amount of tax at the nominal rate on any income on which tax is charged at the dividend trust rate as a result of section 481.

### <sup>F106</sup>*Type 3A*

The amount of tax at the nominal rate on any amount in respect of which—

- (a) the trustees are liable to income tax under section 467 of ITTOIA 2005 (gains from contracts for life insurance etc),
- (b) the trustees are liable to income tax at the trust rate by virtue of section 482 above, and
- (c) tax at the savings rate is treated as having been paid by virtue of section 530 of ITTOIA 2005 (life insurance).]

### *Type 4*

The amount of any tax on income on which tax is charged at the basic rate or at the savings rate as a result of section 491.

### *Type 5*

The amount of tax on any income determined in accordance with section 26 of FA 2005 (special tax treatment for trusts for the benefit of vulnerable persons).

(2) In relation to Types 2 and 3, references to the nominal rate are references to a rate equal to the difference between the dividend trust rate and the dividend ordinary rate.

<sup>F107</sup>(2A) In relation to Type 3A, the reference to the nominal rate is a reference to a rate equal to the difference between the trust rate and the savings rate.]

(3) In relation to Types 1 to 4, references to income do not include income the tax on which is reduced in accordance with section 26 of FA 2005.

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### Textual Amendments

- F105** Words in s. 498(1) substituted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(2\)\(a\)](#)
- F106** Words in s. 498(1) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(2\)\(b\)](#)
- F107** S. 498(2A) inserted (21.7.2008 with effect in accordance with s. 56(4) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 56\(3\)](#)

## CHAPTER 8

### TRUSTEES' EXPENSES AND BENEFICIARY'S INCOME

#### 499 Application of Chapter

- (1) This Chapter applies if—
  - (a) in a tax year (“the current tax year”) income arises to the trustees of a settlement, and
  - (b) before being distributed, some or all of that income is income of another person (“the beneficiary”).
- (2) It contains provision about how the beneficiary's income mentioned in subsection (1) (b) (“the beneficiary's income”) can be reduced for income tax purposes by reference to expenses of the trustees.

#### 500 Restrictions on use of trustees' expenses to reduce the beneficiary's income

- (1) Expenses of the trustees can be used to reduce the beneficiary's income for income tax purposes only so far as—
  - (a) the expenses are incurred by the trustees in the current tax year or in an earlier tax year, and
  - (b) as a result of the expenses being chargeable to income as mentioned in subsection (2) or (3), the beneficiary's entitlement to the beneficiary's income is reduced by reference to the expenses.
- (2) Expenses are chargeable to income for the purposes of subsection (1)(b) if they are chargeable to income by the trustees under a term of the settlement (subject to any overriding law which prevents the expenses from being so chargeable).
- (3) Expenses are also chargeable to income for the purposes of subsection (1)(b) if they—
  - (a) are not chargeable to income by the trustees under a term of the settlement, but
  - (b) are chargeable to income by the trustees in accordance with any law (subject to any overriding term of the settlement which prevents the expenses from being so chargeable).
- (4) Expenses cannot be used to reduce the beneficiary's income for income tax purposes so far as they are expenses which have fallen, or may fall, to be taken into account for the purpose of calculating the trustees' liability to income tax for any tax year.



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## **501 Non-UK resident beneficiaries**

- (1) This section applies if—
  - (a) expenses of the trustees are to be used to reduce the beneficiary's income for income tax purposes, and
  - (b) a proportion of the beneficiary's income is untaxed income (see section 502).
- (2) A proportion of those expenses is not to be so used.
- (3) That proportion is the same as the proportion of the beneficiary's income which is untaxed income.
- (4) In subsection (3) the references to the beneficiary's income and untaxed income do not, in either case, include so much (if any) of that income as is equal to the amount of income tax, or of any foreign tax, for which the trustees are liable on that income.
- (5) “Foreign tax” means any tax which—
  - (a) is of a similar character to income tax, and
  - (b) is imposed by the laws of a territory outside the United Kingdom.

## **502 Meaning of “untaxed income” in section 501**

- (1) For the purposes of section 501 the beneficiary's income is untaxed income so far as the beneficiary is not liable to income tax on it wholly or partly because the beneficiary—
  - (a) has been non-UK resident, or
  - (b) has been treated as resident in a territory outside the United Kingdom under double taxation arrangements.
- (2) If the income tax charged on the beneficiary for the beneficiary's income is limited under Chapter 1 of Part 14 (limits on liability to income tax of non-UK residents), the untaxed income includes so much of the beneficiary's income which is disregarded income (within the meaning of that Chapter) except so far as the disregarded income is within subsection (3).
- (3) The disregarded income is within this subsection so far as—
  - (a) sums representing income tax have been deducted from the income,
  - (b) sums representing income tax have been treated as deducted from or paid in respect of the income, or
  - (c) there are tax credits in respect of the income.

## **503 How beneficiary's income is reduced**

- (1) This section applies if the beneficiary's income is to be reduced for income tax purposes by expenses of the trustees.
- (2) The beneficiary's income is to be reduced in the following order—
  - first, reduce dividend income within subsection (3) (if any),
  - second, reduce dividend income not within that subsection (if any),
  - third, reduce savings income (if any), and
  - fourth, reduce other income (if any).
- (3) Income is within this subsection so far as it is—

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- (a) chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies),
  - (b) chargeable under Chapter 5 of that Part (stock dividends from UK resident companies), or
  - (c) chargeable under Chapter 6 of that Part (release of loan to participator in close company).
- (4) If the trustees are liable for income tax charged on a component of the beneficiary's income at a particular rate, then any reduction of that component is to be made in accordance with the steps set out in subsection (5).
- (5) Here are the steps.

*Step 1*

Deduct from the component the amount of income tax charged on it at the particular rate for which the trustees are liable.

*Step 2*

Take the result from Step 1 and reduce it (but not below nil) by the amount of the trustees' expenses so far as they have not already been used to reduce other components of the beneficiary's income.

*Step 3*

Take the result from Step 2 and gross it up by reference to the particular rate.

The result is the reduced amount of the component of the beneficiary's income.

## CHAPTER 9

### UNAUTHORISED UNIT TRUSTS

#### **504 Treatment of income of unauthorised unit trust**

- (1) This section applies for income tax purposes in relation to an unauthorised unit trust if the trustees are UK resident.
- (2) If income arises to the trustees, the income is treated as the income of the trustees and not of the unit holders.
- (3) If income tax on any part of the income would apart from this subsection be charged at the dividend ordinary rate or at the savings rate, income tax on that part of the income is charged at the basic rate instead.
- (4) None of the following applies in relation to the income—
  - (a) section 479,
  - (b) section 397(1) of ITTOIA 2005 (tax credits for qualifying distributions),
  - (c) section 399(2) and (6) of ITTOIA 2005 (person not entitled to tax credit treated as having paid income tax), and
  - (d) section 400(2) and (3) of ITTOIA 2005 (person whose income includes non-qualifying distribution treated as having paid income tax).
- (5) Sections 494 and 495 do not apply in relation to payments made by the trustees.

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## **505 Relief for trustees of unauthorised unit trust**

- (1) This section applies if in a tax year the trustees of an unauthorised unit trust are treated as making a deemed payment.
- (2) The trustees are entitled to a relief for the tax year equal to the gross amount of the payment.
- (3) The relief is given by deducting that gross amount in calculating the trustees' net income for the tax year (see Step 2 of the calculation in section 23).
- (4) But this is subject to subsections (5) to (7) and section 506.
- (5) Relief is not to be given for the payment so far as it is ineligible for relief.
- (6) For the purpose of determining the extent to which the payment is ineligible for relief (if at all) section 450 applies in relation to the payment as that section applies in relation to a payment to which section 449 applies.
- (7) The total amount of the reliefs given under this section to the trustees for the tax year cannot be greater than the amount of the trustees' modified net income for the tax year (see section 1025).
- (8) In this section and in section 506 “deemed payment” and “the gross amount” have the meanings given by section 941(6).

## **506 Special rules for trustees affected by section 733 of ICTA**

- (1) This section applies if—
  - (a) interest payable to the trustees of an unauthorised unit trust in respect of securities (“the affected income”) is attributable to a tax year,
  - (b) because of section 733(1) of ICTA (dividend buying etc: persons entitled to exemptions), some part of the affected income is not exempt from income tax, and
  - (c) the trustees are treated as making deemed payments in the tax year.
- (2) For the purposes of section 505(7) the trustees' modified net income for the tax year is reduced by the amount of the affected income.
- (3) In this section “interest” and “securities” are to be read in accordance with section 731(9) of ICTA.

# **CHAPTER 10**

## **HERITAGE MAINTENANCE SETTLEMENTS**

### *Introduction*

## **507 Overview of Chapter**

- (1) This Chapter makes provision about income arising from heritage maintenance property comprised in a heritage maintenance settlement.
- (2) In this Chapter—

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“heritage body” means a body or charity of a kind mentioned in paragraph 3(1)(a)(ii) of Schedule 4 to IHTA 1984 (maintenance funds for historic buildings etc),

“heritage direction” means a direction under paragraph 1 of that Schedule,

“heritage maintenance property” means any property in respect of which a heritage direction has effect,

“heritage maintenance settlement” means a settlement which comprises heritage maintenance property, and

“property maintenance purpose” means any of the purposes mentioned in paragraph 3(1)(a)(i) of that Schedule.

- (3) If a settlement comprises both heritage maintenance property and other property, the heritage maintenance property and the other property are treated as comprised in separate settlements for the purposes of Chapters 2 to 8 of this Part and the following provisions—
- (a) sections 64 to 66 and sections 75 to 79 (trade loss relief against general income),
  - (b) sections 83 to 88 (carry-forward trade loss relief), and
  - (c) Chapter 5 of Part 5 of ITTOIA 2005.

*Trustees' election in respect of income etc*

## **508 Election by trustees**

- (1) The trustees of a heritage maintenance settlement may elect for this section to have effect for a tax year.
- (2) If an election under subsection (1) has effect for a tax year, the rules in subsections (3) and (4) apply.
- (3) Income arising in the year from the heritage maintenance property comprised in the settlement, which would otherwise be treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005, is not to be so treated.
- (4) Any sum applied out of the heritage maintenance property in the year for a property maintenance purpose, which would otherwise be treated for income tax purposes as the income of a person—
  - (a) because of the person's interest in (or occupation of) the property in respect of which the sum is applied, or
  - (b) under section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement),
 is not to be so treated.
- (5) An election under subsection (1) must be made on or before the first anniversary of the normal self-assessment filing date for the tax year to which it relates.

## **509 Change of circumstances during a tax year**

- (1) If a change of circumstances arises during a tax year—
  - (a) the part of the year before the change and the part of the year after the change are to be treated as separate tax years for the purposes of section 508, this section and section 510, and

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- (b) separate elections under section 508(1) may be made for each part.
- (2) A change of circumstances arises if conditions A and B are met.
- (3) Condition A is that for any part of the tax year—
  - (a) a heritage direction has effect, and
  - (b) income arising from the heritage maintenance property comprised in the settlement is treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005.
- (4) Condition B is that for the remaining part of the year one or both of the following paragraphs applies—
  - (a) no heritage direction has effect, and
  - (b) no income arising from property comprised in the settlement is treated as income of the settlor under Chapter 5 of Part 5 of ITTOIA 2005.

*Absence of election and income treated as income of settlor: special rules*

## **510 Sums applied for property maintenance purposes**

- (1) This section applies if—
  - (a) income arises from the heritage maintenance property comprised in a heritage maintenance settlement in a tax year in respect of which no election is made under section 508,
  - (b) the income is treated under Chapter 5 of Part 5 of ITTOIA 2005 as income of the settlor, and
  - (c) a sum in excess of the income is applied for a property maintenance purpose in the year.
- (2) Any such sum which is so applied in that year, which would otherwise be treated for income tax purposes as the income of a person—
  - (a) because of the person's interest in (or occupation of) the property in respect of which the sum is applied, or
  - (b) under section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement),is not to be so treated.

## **511 Prevention of double taxation: reimbursement of settlor**

- (1) This section applies to income arising from heritage maintenance property if—
  - (a) the income is treated under Chapter 5 of Part 5 of ITTOIA 2005 as income of the settlor,
  - (b) the income is applied in reimbursing the settlor for expenditure incurred by the settlor for a property maintenance purpose, and
  - (c) the expenditure is deductible in calculating the profits of—
    - (i) a trade, or
    - (ii) a UK property business,carried on by the settlor.
- (2) Any such income—

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- (a) is not to be brought into account as a receipt in calculating the profits of that trade or business, and
- (b) is not to be treated as income of the settlor otherwise than under Chapter 5 of Part 5 of ITTOIA 2005.

*Application of property for non-heritage purposes: charge to tax*

## **512 Charge to tax on some settlements**

- (1) Income tax is charged in respect of a heritage maintenance settlement on any of the occasions described in cases A to D, subject to sections 516 and 517.
- (2) Case A is where any of the property comprised in the settlement (whether capital or income) is applied otherwise than—
  - (a) for a property maintenance purpose, or
  - (b) as respects income not so applied and not accumulated, for the benefit of a heritage body.
- (3) Case B is where any of that property, on ceasing to be comprised in the settlement, devolves otherwise than on a heritage body.
- (4) Case C is where the heritage direction ceases to have effect in respect of the settlement.
- (5) Case D is where any of the property comprised in the settlement, on ceasing at any time to be comprised in the settlement—
  - (a) devolves on a heritage body, and
  - (b) at or before that time an interest under the settlement is or has been acquired for a consideration in money or money's worth by that or another such body.
- (6) For the purposes of subsection (5)(b) any acquisition from another such body is to be ignored.

## **513 Income charged**

- (1) Tax is charged under section 512 on the whole of the income—
  - (a) which has arisen in the relevant period from the property comprised in the settlement, and
  - (b) which has not been applied (whether or not it has been first accumulated) for a property maintenance purpose or for the benefit of a heritage body.
- (2) In this section “relevant period” means—
  - (a) if tax has become chargeable under section 512 in respect of the settlement on a previous occasion, the period since the last occasion, and
  - (b) in any other case, the period since the settlement took effect.
- (3) Tax charged under section 512 is in addition to any tax otherwise chargeable.
- (4) All the provisions of the Income Tax Acts relating to assessments and to the collection and recovery of income tax (so far as applicable) are to apply to that charge.

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#### **514 Persons liable**

The persons liable for any tax charged under section 512 are the trustees of the settlement.

#### **515 Rate of tax**

Tax is charged under section 512 at the rate found by—

- (a) taking the higher rate for the tax year during which the charge arises, and
- (b) reducing it by the trust rate for that year.

#### **516 Transfer of property between settlements**

- (1) This section applies if the whole of the property comprised in a settlement becomes comprised in another settlement because of a tax-free transfer.
- (2) The occasion of charge under section 512, which would otherwise occur at the time of transfer, occurs when tax first becomes chargeable under that section in respect of any settlement comprising the transferred property (“the chargeable settlement”).
- (3) For the purposes of section 513(1) as it applies to the chargeable settlement, the relevant period is adjusted so that it begins—
  - (a) on the occasion when tax last became chargeable under section 512 in respect of any previous settlement from which the property was transferred, or
  - (b) if there has been no such occasion, when such previous settlement (or the first of them) took effect.
- (4) In this section “tax-free transfer” means a transfer of property from one settlement into another in either of the following cases—
  - (a) where paragraph 9(1) of Schedule 4 to IHTA 1984 provides (or, but for paragraph 9(4) of that Schedule, would provide) an exception from charge in respect of the property, or
  - (b) where, both immediately before and immediately after the transfer, the property is heritage maintenance property.

#### **517 Exemption for income treated as income of settlor**

- (1) Tax is not chargeable under section 512 in respect of income which is treated under section 624 or 629 of ITTOIA 2005 as income of the settlor.
- (2) If such income arises in a tax year, any sums applied in the year—
  - (a) for a property maintenance purpose, or
  - (b) for the benefit of a heritage body,are to be treated as paid first out of that income and, so far as there is any excess, out of income that does not fall within subsection (1).

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## PART 10

### SPECIAL RULES ABOUT CHARITABLE TRUSTS ETC

#### *Introduction*

#### **518 Overview of Part**

- (1) This Part makes provision about some gifts and payments made to charitable trusts, including provision imposing charges to income tax and conferring exemptions from those charges (see sections 520 to 523).
- (2) This Part also provides for some of the income of charitable trusts and others to be exempt from charges to income tax (see sections 524 to 537).
- (3) In the provisions of this Part containing exemptions, references to total income of a charitable trust are to the total income of the trustees of the charitable trust concerned.
- (4) See section 538 for provision about making claims for the exemptions under this Part.
- (5) In the case of a charitable trust which has a non-exempt amount for a tax year (see section 540), the exemptions under this Part are subject to restrictions (see section 539).
- (6) The non-exempt amount for a tax year depends on the charitable trust's attributable income and gains for the tax year and its non-charitable expenditure for the tax year (see sections 540 and 543 to 564).

#### **519 Meaning of “charitable trust”**

In this Part “charitable trust” means a trust established for charitable purposes only.

#### *Gifts and other payments*

#### **520 Gifts entitling donor to gift aid relief: income tax treated as paid**

- (1) This section applies if a gift is made to a charitable trust by an individual and the gift is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid).
- (2) The charitable trust is treated as receiving, under deduction of income tax at the basic rate for the tax year in which the gift is made, a gift of an amount equal to the grossed up amount of the gift.
- (3) The grossed up amount of the gift is the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.
- (4) The income tax treated as deducted is treated as income tax paid by the trustees of the charitable trust.

#### **521 Gifts entitling donor to gift aid relief: income tax liability and exemption**

- (1) This section applies if gifts are made to charitable trusts by individuals and the gifts are qualifying donations for the purposes of Chapter 2 of Part 8 (gift aid).



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- (2) Income tax is charged on the gifts under this section.
- (3) It is charged on the grossed up amount of the gifts arising in the tax year.
- (4) But a gift is not taken into account in calculating total income so far as it is applied to charitable purposes only.
- (5) The grossed up amount of a gift is the amount of the gift grossed up by reference to the basic rate for the tax year in which the gift is made.
- (6) The trustees of the charitable trust are liable for any tax charged under this section.

## **522 Gifts of money from companies: income tax liability and exemption**

- (1) This section applies if gifts of sums of money are made to charitable trusts by companies.
- (2) But this section does not apply to a gift of a sum of money made by a company that is itself a charity (see section 523).
- (3) Income tax is charged on the gifts under this section.
- (4) It is charged on the full amount of the gifts arising in the tax year.
- (5) But a gift is not taken into account in calculating total income so far as it is applied to charitable purposes only.
- (6) The trustees of the charitable trust are liable for any tax charged under this section.

## **523 Payments from other charities: income tax liability and exemption**

- (1) This section applies to payments which—
  - (a) are received by charitable trusts from other charities,
  - (b) are not made for full consideration in money or money's worth,
  - (c) are not charged to income tax, apart from this section, and
  - (d) are not of a description which (on a claim) would be exempt from income tax under any of the exemptions conferred by this Part.
- (2) This section does not apply to a payment which arises from a source outside the United Kingdom.
- (3) Income tax is charged under this section on the payments.
- (4) It is charged on the full amount of the payments arising in the tax year.
- (5) But a payment is not taken into account in calculating total income so far as it is applied to charitable purposes only.
- (6) The amount charged under this section in the case of certain payments made by the trustees of a charitable trust in the exercise of a discretion is subject to section 494 (grossing up of discretionary payments from trusts).
- (7) The trustees of the charitable trust are liable for any tax charged under this section.

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### *Other exemptions*

## **524 Exemption for profits etc of charitable trades**

- (1) The income mentioned in subsection (2) is not taken into account in calculating total income if conditions A and B are met.
- (2) The income referred to in subsection (1) is—
  - (a) the profits of a trade carried on by a charitable trust,
  - (b) amounts treated as adjustment income of a charitable trust under section 228 of ITTOIA 2005 in respect of a trade carried on by the trust, and
  - (c) post-cessation receipts arising from a trade carried on by a charitable trust which are received by the trustees of the trust or to which they are entitled.
- (3) Condition A is—
  - (a) in the case of the profits of a trade, that the profits are profits of a tax year in relation to which the trade is a charitable trade,
  - (b) in the case of an amount treated as adjustment income, that the amount arises in a tax year in relation to which the trade is a charitable trade, and
  - (c) in the case of a post-cessation receipt, that the trade was a charitable trade in relation to the tax year in which the cessation occurred.

See section 525 as to when a trade is a charitable trade in relation to a tax year.

- (4) Condition B is that the profits are, or the amount or post-cessation receipt is, (as the case may be) applied to the purposes of the charitable trust only.
- (5) Sections 232(1) and (2), 235 and 236 of ITTOIA 2005 (when adjustment income is treated as arising) apply for the purposes of subsection (3) as they apply for the purposes of Chapter 17 of Part 2 of that Act.
- (6) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of Chapter 18 of Part 2 of ITTOIA 2005 (post-cessation receipts) (see sections 246 to 253 of that Act).

## **525 Meaning of “charitable trade”**

- (1) For the purposes of this Part a trade carried on by a charitable trust is a charitable trade in relation to a tax year if throughout the basis period for the tax year—
  - (a) the trade is exercised in the course of carrying out a primary purpose of the charitable trust, or
  - (b) the work in connection with the trade is mainly carried out by beneficiaries of the charitable trust.
- (2) For the purposes of subsection (1)(a), if a trade is exercised partly in the course of carrying out a primary purpose of the charitable trust and partly otherwise, each part is to be treated as a separate trade.
- (3) For the purposes of subsection (1)(b), if work in connection with a trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried out by beneficiaries and the other part are to be treated as separate trades.
- (4) If different parts of a trade are treated as separate trades under subsection (2) or (3), a just and reasonable apportionment is to be made for that purpose of—

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- (a) expenses and receipts of the trade, and
- (b) any amounts which are treated as adjustment income under section 228 of ITTOIA 2005 in respect of the trade, or which are post-cessation receipts arising from the trade for the purposes of Chapter 18 of Part 2 of that Act.

(5) For the rules about basis periods, see Chapter 15 of Part 2 of ITTOIA 2005.

## **526 Exemption for profits etc of small-scale trades**

- (1) The income mentioned in subsection (2) is not taken into account in calculating total income if conditions A and B are met.
- (2) The income referred to in subsection (1) is—
  - (a) the profits of a trade carried on by a charitable trust,
  - (b) amounts treated as adjustment income of a charitable trust under section 228 of ITTOIA 2005 in respect of a trade carried on by the trust, and
  - (c) post-cessation receipts arising from a trade carried on by a charitable trust which are received by the trustees of the trust or to which they are entitled.
- (3) Subsection (1) does not apply in respect of—
  - (a) profits of a trade that are, apart from this section, exempt from income tax chargeable under Part 2 of ITTOIA 2005,
  - (b) amounts treated as adjustment income that are, apart from this section, exempt from income tax chargeable under Chapter 17 of Part 2 of that Act, or
  - (c) post-cessation receipts that are, apart from this section, exempt from income tax chargeable under Chapter 18 of Part 2 of that Act.
- (4) Condition A is—
  - (a) in the case of the profits of a trade, that the profits are profits of a tax year in relation to which the condition specified in section 528 (condition as to trading and miscellaneous incoming resources) is met,
  - (b) in the case of an amount treated as adjustment income, that the amount arises in such a tax year, and
  - (c) in the case of a post-cessation receipt, that it is received in such a tax year.
- (5) Condition B is that the profits are, or the amount or post-cessation receipt is, (as the case may be) applied to the purposes of the charitable trust only.
- (6) Sections 232(1) and (2), 235 and 236 of ITTOIA 2005 (when adjustment income is treated as arising) apply for the purposes of subsection (4) as they apply for the purposes of Chapter 17 of Part 2 of that Act.
- (7) In this section “post-cessation receipt” means an amount that is a post-cessation receipt for the purposes of Chapter 18 of Part 2 of that Act (post-cessation receipts) (see sections 246 to 253 of that Act).

## **527 Exemption from charges under provisions to which section 1016 applies**

- (1) Any income or gains of a charitable trust that is or are chargeable to income tax under or by virtue of any provision to which section 1016 applies is not or are not taken into account in calculating total income if conditions A and B are met.

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- (2) Subsection (1) does not apply in respect of any income or gains chargeable to income tax by virtue of any of—
  - (a) section 214 of ICTA (chargeable payments connected with exempt distributions),
  - (b) section 804 of that Act (double taxation relief),
  - (c) Chapter 9 of Part 4 of ITTOIA 2005 (gains from contracts for life insurance etc),
  - (d) Chapter 5 of Part 5 of that Act (settlements: amounts treated as income of settlor),
  - (e) section 755 (transactions in land), and
  - (f) any other enactment specified in an order made by the Treasury.
- (3) Subsection (1) does not apply in respect of any income that is, or gains that are, apart from this section, exempt from income tax chargeable under or by virtue of any provision to which section 1016 applies.
- (4) Condition A is that the income is, or the gains are, for a tax year in relation to which the condition specified in section 528 is met.
- (5) Condition B is that the income is, or the gains are, applied to the purposes of the charitable trust only.

## **528 Condition as to trading and miscellaneous incoming resources**

- (1) The condition in this section is met in relation to a tax year if—
  - (a) the sum of the charitable trust's trading incoming resources and miscellaneous incoming resources for the tax year does not exceed the requisite limit for the tax year, or
  - (b) the trustees of the charitable trust had, at the beginning of the tax year, a reasonable expectation that it would not do so.
- (2) The charitable trust's "trading incoming resources" for the tax year are—
  - (a) the incoming resources which are required to be taken into account in calculating the profits of, or losses made in, the basis period for the tax year of any non-exempt trade carried on by the charitable trust, and
  - (b) the incoming resources which are treated as adjustment income under section 228 of ITTOIA 2005 in respect of such a trade, or which are post-cessation receipts arising from such a trade.

"Post-cessation receipt" has the meaning given by section 526(7).
- (3) For the purposes of subsection (2) a trade is a "non-exempt trade" if any profits of the trade would not, apart from section 526, be exempt from income tax chargeable under Part 2 of ITTOIA 2005.
- (4) The charitable trust's "miscellaneous incoming resources" for the tax year are the incoming resources which are required to be taken into account in calculating non-exempt miscellaneous income or non-exempt miscellaneous losses for the tax year.
- (5) In this section—
 

"non-exempt miscellaneous income" means income or gains chargeable to income tax under or by virtue of any provision to which section 1016 applies

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that is not, or are not, apart from section 526 or 527, exempt from income tax chargeable under or by virtue of that provision, and

“non-exempt miscellaneous losses” means losses arising from a transaction which is of such a nature that if income or gains had arisen from it the income would have been non-exempt miscellaneous income.

(6) The requisite limit—

- (a) is 25% of the charitable trust's total incoming resources for the tax year, but
- (b) must not be less than £5,000 or more than £50,000.

## **529 Exemption for profits from fund-raising events**

- (1) The profits of a trade carried on by a charitable trust are not taken into account in calculating total income so far as they arise from a VAT-exempt event.
- (2) Subsection (1) applies so far as the profits are applied to the purposes of the charitable trust only.
- (3) An event is a VAT-exempt event if the supply of goods and services by the charitable trust in connection with the event would be exempt from value added tax under Group 12 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) (fund-raising events by charities and other qualifying bodies).

## **530 Exemption for profits from lotteries**

- (1) The profits accruing to a charitable trust from a lottery are not taken into account in calculating total income if conditions A and B are met.
- (2) Condition A is that—
  - [<sup>F108</sup>(a) the lottery is an exempt lottery within the meaning of the Gambling Act 2005 by virtue of Part 1 or 4 of Schedule 11 to that Act,
  - (ab) the lottery is promoted in accordance with a lottery operating licence within the meaning of Part 5 of that Act, or]
  - (b) the lottery is promoted and conducted in accordance with Article 133 or 135 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)).
- (3) Condition B is that the profits are applied to the purposes of the charitable trust only.

### **Textual Amendments**

**F108** S. 530(2)(a)(ab) substituted for s. 530(2)(a) (1.9.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 25 para. 2, 23\(2\)](#); [S.I. 2007/2532, art. 2](#)

## **531 Exemption for property income etc**

- (1) Income which is chargeable to income tax under Part 2 of ITTOIA 2005 (trading income) as a result of section 261 of that Act is not taken into account in calculating total income so far as—
  - (a) it arises in respect of rents or other receipts from an estate, interest or right in or over land, and

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- (b) the estate, interest or right is vested in any person in trust for a charitable trust or for charitable purposes.
- (2) Income which is chargeable to income tax under Part 3 of ITTOIA 2005 (property income) is not taken into account in calculating total income so far as—
  - (a) it arises in respect of an estate, interest or right in or over land, and
  - (b) the estate, interest or right is vested in any person in trust for a charitable trust or for charitable purposes.
- [<sup>F109</sup>(2A) Distributions to which section 121 of FA 2006 (Real Estate Investment Trusts: distributions) applies and which are chargeable to income tax under Part 2 or Part 3 of ITTOIA 2005 are not taken into account in calculating total income so far as they arise in respect of shares vested in a person in trust for a charitable trust or for charitable purposes.]
- (3) Subsection (1) [<sup>F110</sup>to (2A)] apply so far as the income is applied to charitable purposes only.

#### Textual Amendments

**F109** S. 531(2A) inserted (with effect in accordance with s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 17 para. 18\(a\)](#)

**F110** Words in s. 531(3) substituted (with effect in accordance with s. 52(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 17 para. 18\(b\)](#)

## 532 Exemption for savings and investment income

- (1) The income mentioned in subsection (2) is not taken into account in calculating total income if—
  - (a) it is income of a charitable trust, or
  - (b) it is required, under an Act, court judgment, charter, trust deed or will, to be applied to charitable purposes only.
- (2) The income referred to in subsection (1) is—
  - (a) interest,
  - (b) a dividend or other distribution of a UK resident company,
  - (c) a dividend of a non-UK resident company,
  - (d) an annuity payment under a purchased life annuity,
  - (e) profits on the disposal of deeply discounted securities, or
  - (f) income treated for the purposes of Chapter 10 of Part 4 of ITTOIA 2005 (distributions from unauthorised unit trusts) as received by a unit holder from a scheme to which section 547 of that Act applies (unauthorised unit trust schemes).
- (3) Subsection (1) applies only so far as the income falls within, and is dealt with under, Part 4 of ITTOIA 2005 (see section 366 of that Act as to provisions given priority over Part 4).
- (4) Subsection (1) applies so far as the income is applied to charitable purposes only.
- (5) In this section—

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“deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) (see section 430 of that Act),

“disposal”, in relation to a deeply discounted security, has the same meaning as in Chapter 8 of Part 4 of that Act (see section 437(1) of that Act),

“dividend”, in relation to a UK resident company, has the same meaning as in Chapter 3 of Part 4 of that Act (dividends etc from UK resident companies etc) (see section 382(4) of that Act),

“interest” includes anything treated as interest for the purposes of Chapter 2 of Part 4 of that Act (interest), and

“purchased life annuity” has the same meaning as in Chapter 7 of Part 4 of that Act (purchased life annuity payments) (see section 423 of that Act).

### **533 Exemption for public revenue dividends**

- (1) Public revenue dividends on securities which are in the name of trustees are not taken into account in calculating total income so far as the dividends are applicable and applied only for the repair of—
  - (a) a cathedral, college, church or chapel, or
  - (b) a building used only for the purposes of divine worship.
- (2) In this section “public revenue dividends” means—
  - (a) income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland, or
  - (b) income from securities issued by or on behalf of a government or a public or local authority in a country outside the United Kingdom.

### **534 Exemption for transactions in deposits**

- (1) Profits or gains arising to a charitable trust from the disposal of exempt deposit rights are not taken into account in calculating total income.
- (2) Subsection (1) applies so far as the profits or gains are applied to charitable purposes only.
- (3) For the purposes of this section, the exercise of an exempt deposit right is a disposal of it, except so far as the right is a right to receive interest.
- (4) In this section “exempt deposit rights” means—
  - (a) a right to receive, with or without interest, a principal amount stated in, or determined in accordance with, the current terms of issue of an eligible debt security, where in accordance with those terms the issue of uncertificated units of the eligible debt security corresponds to the issue of a certificate of deposit,
  - (b) a right to receive the principal amount stated in a certificate of deposit, with or without interest, and
  - (c) an uncertificated right to receive a principal amount, with or without interest, as a result of a deposit of money.
- (5) In this section—

“eligible debt security” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001 (S.I. 2001/3755),

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“uncertificated”, in relation to a unit, has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001,

“uncertificated right” means a right in respect of which no certificate of deposit has been issued, although the person for the time being entitled to it is entitled to call for the issue of such a certificate, and

“unit” has the meaning given in regulation 3(1) of the Uncertificated Securities Regulations 2001.

### **535 Exemption for offshore income gains**

- (1) Offshore income gains accruing to a charitable trust are not taken into account in calculating total income.
- (2) Subsection (1) applies if the gain is applicable and applied to charitable purposes only.
- (3) In this section “offshore income gain” has the same meaning as in Chapter 5 of Part 17 of ICTA (offshore funds) (see section 758 of, and Schedule 28 to, that Act).
- (4) See section 761(6B) of ICTA, which—
  - (a) applies where property held on charitable trusts ceases to be subject to charitable trusts, and
  - (b) provides for any gain accruing under that subsection to be treated as an offshore income gain not accruing to a charity.

### **536 Exemption for certain miscellaneous income**

- (1) The income mentioned in subsection (3) is not taken into account in calculating total income if—
  - (a) it is income of a charitable trust, or
  - (b) it is required, under an Act, court judgment, charter, trust deed or will, to be applied to charitable purposes only.
- (2) Subsection (1) applies so far as the income is applied to charitable purposes only.
- (3) The income referred to in subsection (1) is—
  - (a) royalties and other income from intellectual property that do not fall within Chapter 2 of Part 2 of ITTOIA 2005 (receipts of a trade etc),
  - (b) income derived from a relevant telecommunication right that is not income falling within Chapter 2 of Part 2 of ITTOIA 2005 (receipts of a trade etc),
  - (c) annual payments charged to tax under Chapter 7 of Part 5 of ITTOIA 2005, and
  - (d) relevant foreign distributions.
- (4) In this section—
 

“intellectual property” has the same meaning as in section 579 of ITTOIA 2005,

“relevant foreign distribution” means a distribution of a non-UK resident company which—

  - (a) is not chargeable to tax under Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies), but



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(b) would be chargeable to tax under Chapter 3 of that Part of that Act (dividends etc from UK resident companies etc) if the company were a UK resident company, and

“relevant telecommunication right” has the same meaning as in Chapter 10 of Part 2 of that Act (trade profits: certain telecommunications rights) (see section 146 of that Act).

### **537 Exemption for income from estates in administration**

- (1) If the person liable under section 659 of ITTOIA 2005 for any income tax charged under section 649 of that Act (charge to tax on estate income) is the trustee of a charitable trust, the estate income is not taken into account in calculating total income.
- (2) Subsection (1) applies so far as the estate income is applied to the purposes of the charitable trust only.
- (3) In this section “estate income” has the same meaning as in Chapter 6 of Part 5 of ITTOIA 2005 (beneficiaries' income from estates in administration) (see section 649(2) of that Act).

### *Claims*

### **538 Requirement to make claim**

- (1) The exemptions under this Part require a claim.
- (2) Subsection (1) does not apply to an exemption under—
  - (a) section 534 (exemption for transactions in deposits), or
  - (b) section 535 (exemption for offshore income gains).
- (3) The trustees of a charitable trust are treated as having made a claim for any exemption to which they may be entitled under section 521 (gifts entitling donor to gift aid relief) if—
  - (a) the charitable trust receives a gift as a result of a direction under section 429(2) (giving through self-assessment return), and
  - (b) as a result of section 429(4), the gift is treated as a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid).
- (4) See section 46C of TMA 1970 and paragraph 10 of Schedule 1A to that Act for provision about the jurisdiction of Special Commissioners over appeals concerning claims for exemption under this Part.

### *Restrictions on exemptions*

### **539 Restrictions on exemptions**

- (1) This section applies if a charitable trust has a non-exempt amount for a tax year (see section 540).
- (2) The exemptions under this Part do not apply, and are treated as never having applied, to so much of any income of the charitable trust for the tax year as is attributed under section 541 to the non-exempt amount.

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- (3) Section 256(4) of TCGA 1992 contains corresponding restrictions which apply in relation to section 256(1) of that Act (gains accruing to charities not to be chargeable gains).

#### 540 The non-exempt amount

- (1) A charitable trust has a non-exempt amount for a tax year if it has—
  - (a) non-charitable expenditure for the tax year (amount A), and
  - (b) attributable income and gains for the tax year (amount B).
- (2) The non-exempt amount for the tax year is—
  - (a) amount A, or
  - (b) if less, amount B.
- (3) For the purposes of this Part—
  - (a) a charitable trust's "attributable income" for a tax year is the charitable trust's income for the tax year that is exempt from income tax as a result of any of the exemptions under this Part,
  - (b) a charitable trust's "attributable gains" for a tax year are any gains accruing to the charitable trust in the tax year that as a result of [F111 section 256(1)] of TCGA 1992, are not chargeable gains, and
  - (c) a charitable trust's "attributable income and gains" for a tax year is the sum of its attributable income for the tax year and its attributable gains for the tax year.
- (4) In applying subsection (3)(a) ignore any restrictions on the exemptions under this Part which result from section 539(2).
- (5) In applying subsection (3)(b) ignore any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act.

#### Textual Amendments

**F111** Words in s. 540(3)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\), arts. 1\(1\), 3\(3\)](#)

#### 541 Attributing income to the non-exempt amount

- (1) This section applies if a charitable trust has a non-exempt amount for a tax year.
- (2) Attributable income of the charitable trust for the tax year may be attributed to the non-exempt amount but only so far as the non-exempt amount has not been used up.
- (3) The non-exempt amount can be used up (in whole or in part) by—
  - (a) attributable income being attributed to it under this section, or
  - (b) attributable gains being attributed to it under section 256A of TCGA 1992.
- (4) The whole of the non-exempt amount must be used up by—
  - (a) attributable income being attributed to the whole of it under this section,
  - (b) attributable gains being attributed to the whole of it under section 256A of TCGA 1992, or

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- (c) a combination of attributable income being attributed to some of it under this section and attributable gains being attributed to the rest of it under section 256A of TCGA 1992.

- (5) See section 542 for the way in which income is to be attributed to the non-exempt amount under this section.

## **542 How income is attributed to the non-exempt amount**

- (1) This section is about the ways in which attributable income can be attributed to a non-exempt amount under section 541.
- (2) The trustees of the charitable trust may specify the attributable income that is to be attributed to the non-exempt amount.
- (3) A specification under subsection (2) is made by notice to an officer of Revenue and Customs.
- (4) Subsection (6) applies if—
  - (a) an officer of Revenue and Customs requires the trustees of a charitable trust to make a specification under this section, and
  - (b) the trustees have not given notice under subsection (3) of the specification before the end of the required period.
- (5) The required period is 30 days beginning with the day on which the officer made the requirement.
- (6) An officer of Revenue and Customs may determine the attributable income that is to be attributed to the non-exempt amount.

### *Non-charitable expenditure*

## **543 Meaning of “non-charitable expenditure”**

- (1) For the purposes of this Part a charitable trust's non-charitable expenditure for a tax year is—
  - (a) any loss made in the tax year in a trade carried on by the charitable trust unless—
    - (i) the trade is a charitable trade in relation to the tax year, or
    - (ii) the trade is not a charitable trade in relation to the tax year but profits of the trade arising in the tax year would be exempt from income tax as a result of one of the exemptions in sections 526, 529 or 530,
  - (b) any payment made in the tax year by the charitable trust in connection with a trade in circumstances where relief is available under section 96 (post-cessation trade relief) unless—
    - (i) the trade was a charitable trade in relation to the tax year in which the cessation occurred, or
    - (ii) the trade was not a charitable trade in relation to that tax year but profits of the trade arising immediately before the cessation would have been exempt from income tax as a result of one of the exemptions in sections 526, 529 or 530,

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- (c) any loss made in the tax year in a trade, or in a UK property business or an overseas property business, carried on by the charitable trust, if—
  - (i) the loss relates to land, and
  - (ii) profits of the trade, or income of the business, generated from the land in the tax year would not be exempt from income tax as a result of the exemptions in section 531,
- (d) any payment made in the tax year by the charitable trust in connection with a trade or UK property business in circumstances where relief is available under section 96 or 125 (post-cessation trade or property relief), if—
  - (i) the payment relates to land, and
  - (ii) profits of the trade, or income of the business, generated from the land immediately before the cessation would not have been exempt from income tax as a result of the exemptions in section 531,
- (e) any loss made in the tax year in a miscellaneous transaction entered into by the charitable trust otherwise than in the course of carrying out a charitable purpose,
- (f) any expenditure incurred by the charitable trust in the tax year, not falling within paragraphs (b) or (d), which is not incurred for charitable purposes only and is not required to be taken into account in calculating—
  - (i) the profits of, or losses made in, any trade, UK property business or overseas property business carried on by the charitable trust, or
  - (ii) the profit or loss made in any miscellaneous transaction entered into by the charitable trust,
- (g) any payment made in the tax year by the charitable trust to a substantial donor which is treated under section 551(1) or (5) as non-charitable expenditure,
- (h) any non-charitable expenditure treated as incurred under section 551(2) as a result of a transaction between the charitable trust and a substantial donor,
- (i) the amount of any of the charitable trust's funds that is invested in the tax year in an investment which is not an approved charitable investment (see section 558), and
- (j) any amount lent in the tax year by the charitable trust, if the loan is neither an investment nor an approved charitable loan (see section 561).

But anything which falls within more than one of the above paragraphs counts as non-charitable expenditure only once.

- (2) An amount may also be non-charitable expenditure for a tax year as a result of section 562 (excess expenditure treated as non-charitable expenditure of earlier years).
- (3) This section needs to be read with—
  - section 525 (meaning of “charitable trade”),
  - sections 544 to 548 (supplementary provision in relation to this section, in particular in relation to subsection (1)(f), (i) and (j)),
  - sections 549 to 557 (transactions with substantial donors),
  - section 558 (approved charitable investments), and
  - section 561 (approved charitable loans).

## 544 Section 543: supplementary

- (1) This section applies for the purposes of section 543.

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- (2) For rules about the calculation of losses, see—
  - (a) section 26 of ITTOIA 2005 (losses of a trade calculated on same basis as profits),
  - (b) section 272 of that Act (which applies section 26 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits), and
  - (c) section 872 of that Act (losses from miscellaneous transactions calculated on same basis as miscellaneous income).
- (3) A transaction is a miscellaneous transaction if it is of such a nature that, if income or gains had arisen from it—
  - (a) ignoring section 527 (exemption from charges under provisions to which section 1016 applies), it would have been charged to income tax under or by virtue of any provision to which section 1016 applies, and
  - (b) the trustees of the charitable trust would have been liable for any tax so chargeable.
- (4) References to a charitable trust making a loss in a trade in a tax year are to the charitable trust making a loss in the trade in the basis period for the tax year.

#### **545 Section 543(1)(f): meaning of expenditure**

- (1) For the purposes of section 543(1)(f) “expenditure” includes expenditure of a capital nature.
- (2) None of the following is “expenditure” for those purposes—
  - (a) the investment of any of the charitable trust's funds,
  - (b) the making of a loan by the charitable trust, or
  - (c) the repayment by the charitable trust of the whole or a part of a loan made to it.

#### **546 Section 543(1)(f): tax year in which certain expenditure treated as incurred**

- (1) This section applies for the purposes of section 543(1)(f).
- (2) Subsection (3) applies to expenditure which is referable to commitments (whether or not of a contractual nature) that the charitable trust has entered into before or during a tax year.
- (3) The expenditure is treated as incurred in the tax year if, had the charitable trust been required to draw up accounts that met the requirements mentioned in subsection (4), the expenditure would have been required to be taken into account in preparing those accounts.
- (4) The requirements referred to in subsection (3) are—
  - (a) that the accounts are drawn up for the tax year, and
  - (b) that UK generally accepted accounting practice applies with respect to them.

#### **547 Section 543(1)(f): payment to body outside the UK**

A payment made, or to be made, to a body situated outside the United Kingdom is non-charitable expenditure under section 543(1)(f) if—

- (a) it is incurred for charitable purposes only, but

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- (b) the trustees of the charitable trust have not taken such steps as are reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

#### **548 Section 543(1)(i) and (j): investments and loans**

- (1) Subsection (2) applies if in a tax year a charitable trust—
  - (a) realises the whole or part of an investment which was made in the tax year and is not an approved charitable investment (see section 558), or
  - (b) is repaid the whole or part of a loan which was made in the tax year and is neither an investment nor an approved charitable loan (see section 561).
- (2) Any further investment or lending in the tax year of the sum realised or repaid, so far as it does not exceed the sum originally invested or lent, is not non-charitable expenditure as a result of section 543(1)(i) or (j).

#### *Substantial donor transactions*

#### **549 Transactions with substantial donors**

- (1) For the purposes of this section and sections 551 to 553, “substantial donor transaction” means any of the following—
  - (a) the sale or letting of property by a charitable trust to a substantial donor,
  - (b) the sale or letting of property to a charitable trust by a substantial donor,
  - (c) the provision of services by a charitable trust to a substantial donor,
  - (d) the provision of services to a charitable trust by a substantial donor,
  - (e) an exchange of property between a charitable trust and a substantial donor,
  - (f) the provision of financial assistance by a charitable trust to a substantial donor,
  - (g) the provision of financial assistance to a charitable trust by a substantial donor, and
  - (h) investment by a charitable trust in the business of a substantial donor.
- (2) For the purposes of this section and sections 551 to 553, a person is a substantial donor to a charitable trust for a tax year if—
  - (a) the charitable trust receives relievable gifts of at least £25,000 from the person in a period of 12 months in which the tax year wholly or partly falls, or
  - (b) the charitable trust receives relievable gifts of at least £100,000 from the person in a period of six years in which the tax year wholly or partly falls.
- (3) If a person is a substantial donor to a charitable trust for a tax year as a result of subsection (2)(a) or (b), the person is a substantial donor to the charitable trust for each of the following five tax years.
- (4) A transaction entered into in a tax year with a person who is a substantial donor for that year may be a substantial donor transaction, even if it was not until after the transaction was entered into that the person first met the definition of “substantial donor” for the tax year.

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## **550 Meaning of “relievable gift”**

A gift is a “relievable gift” for the purposes of section 549(2) if relief is available in respect of it under—

- (a) section 83A of ICTA (gifts in kind),
- (b) section 339 of ICTA (donations by companies),
- (c) sections 587B and 587C of ICTA (gifts of shares, securities and real property),
- (d) section 257 of TCGA 1992 (gifts of chargeable assets),
- (e) section 63 of CAA 2001 (gifts of plant and machinery),
- (f) sections 713 to 715 of ITEPA 2003 (payroll giving),
- (g) section 108 of ITTOIA 2005 (gifts of trading stock),
- (h) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts), or
- (i) Chapters 2 or 3 of Part 8 of this Act (gift aid and gifts of shares, securities and real property).

## **551 Non-charitable expenditure in substantial donor transactions**

- (1) A payment made by a charitable trust to a substantial donor in the course of, or for the purposes of, a substantial donor transaction is treated for the purposes of section 543 as non-charitable expenditure.
- (2) If the terms of a substantial donor transaction are less beneficial to the charitable trust than terms which might be expected in a transaction at arm's length, the charitable trust is treated for the purposes of section 543 as incurring non-charitable expenditure.
- (3) The amount of the non-charitable expenditure that the charitable trust is treated as incurring under subsection (2) is equal to the amount which an officer of Revenue and Customs determines as the cost to the charitable trust of the difference in terms.
- (4) A charity is treated as incurring non-charitable expenditure under subsection (2) at such time (or times) as an officer of Revenue and Customs may determine.
- (5) A payment by a charitable trust of remuneration to a substantial donor is treated for the purposes of section 543 as non-charitable expenditure unless it is remuneration, for services as a trustee, which is approved by—
  - (a) the Charity Commission,
  - (b) another body with responsibility for regulating charities by virtue of legislation having effect in respect of any part of the United Kingdom, or
  - (c) a court.
- (6) If remuneration is paid otherwise than in money, subsection (5) applies as if it had been paid in money of an amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.

## **552 Adjustment if section 551(1) and (2) applied to single transaction**

- (1) Either or both of subsections (1) and (2) of section 551 may be applied to a single transaction between a charitable trust and a substantial donor.
- (2) But if they are both applied, the amount of non-charitable expenditure that the charitable trust would, apart from this subsection, be treated as incurring under section 551(2) in respect of the transaction, is reduced by the section 551(1) amount (but is not to be reduced below nil).

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- (3) The “section 551(1) amount” means the amount of any payment made by the charitable trust, in the course of, or for the purposes of, the transaction, that is treated as non-charitable expenditure under section 551(1).

### **553 Section 551: certain payments and benefits to be ignored**

- (1) In the application of section 551, payments by a charitable trust, or benefits arising to a substantial donor from a transaction, are to be ignored so far as—
- (a) they relate to a donation by the donor, and
  - (b) either condition A or condition B is met.
- (2) Condition A is that—
- (a) the donation is made by an individual, and
  - (b) the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 416 because of subsection (7)(b) of that section (restrictions on associated benefits).
- (3) Condition B is that—
- (a) the donation is made by a company, and
  - (b) the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 339 of ICTA because of subsection (3B) (b) of that section (restrictions on associated benefits).

### **554 Transactions: exceptions**

- (1) A transaction within section 549(1)(b) or (d) is not a substantial donor transaction if an officer of Revenue and Customs determines that the transaction—
- (a) takes place in the course of a business carried on by the substantial donor,
  - (b) is on terms which are no less beneficial to the charitable trust than those which might be expected in a transaction at arm's length, and
  - (c) is not part of an arrangement for the avoidance of any tax.
- (2) The provision of services to a substantial donor is not a substantial donor transaction if an officer of Revenue and Customs determines that those services are provided—
- (a) in the course of carrying out a primary purpose of the charitable trust, and
  - (b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.
- (3) The provision of financial assistance to a charitable trust by a substantial donor is not a substantial donor transaction if an officer of Revenue and Customs determines that the assistance—
- (a) is on terms which are no less beneficial to the charitable trust than those which might be expected in a transaction at arm's length, and
  - (b) is not part of an arrangement for the avoidance of any tax.
- (4) Investment by a charitable trust in the business of a substantial donor is not a substantial donor transaction if the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.
- (5) The following are not substantial donor transactions—



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- (a) a disposal at an undervalue in respect of which relief is available under section 431 or section 587B of ICTA (gifts of shares, securities and real property), or
  - (b) a disposal at an undervalue to which section 257(2) of TCGA 1992 (gifts of chargeable assets) applies,
- but such disposals may be taken into account in the application of section 549(2).

#### **555 Donors: exceptions**

- (1) A company which is wholly owned by a charity within the meaning of section 339(7AB) of ICTA is not a substantial donor in relation to a charitable trust which owns it (or which owns any part of it).
- (2) A registered social landlord or housing association is not a substantial donor in relation to a charitable trust with which it is connected.
- (3) “Registered social landlord or housing association” means a body entered on a register maintained under—
  - (a) section 1 of the Housing Act 1996 (c. 52),
  - (b) section 57 of the Housing (Scotland) Act 2001 (asp. 10), or
  - (c) Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1725 (N.I. 15)).
- (4) For the purposes of subsection (2), a body and a charity are connected if (and only if)—
  - (a) one is wholly owned, or subject to control, by the other, or
  - (b) both are wholly owned, or subject to control, by the same person.

#### **556 Connected charities**

- (1) A charitable trust and any other charities with which it is connected are to be treated as a single charitable trust for the purposes of section 549 to 555.
- (2) For this purpose “connected” means connected in a matter relating to the structure, administration or control of a charity.

#### **557 Substantial donor transactions: supplementary**

- (1) In sections 549 to 555—
  - (a) a reference to a substantial donor or other person includes a reference to a person connected with the donor or other person,
  - (b) “financial assistance” includes, in particular—
    - (i) the provision of a loan, guarantee or indemnity, and
    - (ii) entering into alternative finance arrangements within the meaning of section 46 of FA 2005, and
  - (c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.
- (2) On an appeal against an assessment the Special Commissioners may affirm or replace a decision of an officer of Revenue and Customs under section 551 or 554.
- (3) The Treasury may by regulations vary a sum, or a period of time, specified in section 549(2).

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### *Approved charitable investments and loans*

## **558 Approved charitable investments**

An investment is an approved charitable investment for the purposes of section 543 (meaning of “non-charitable expenditure”) if it is an investment of any of the following types. *Type 1*

An investment to which section 559 applies.

#### *Type 2*

An investment in a common investment fund established under—

- (a) section 22 of the Charities Act 1960 (c. 58),
- (b) section 24 of the Charities Act 1993 (c. 10), or
- (c) section 25 of the Charities Act (Northern Ireland) 1964.

#### *Type 3*

An investment in a common deposit fund established under—

- (a) section 22A of the Charities Act 1960, or
- (b) section 25 of the Charities Act 1993.

#### *Type 4*

An investment in a fund which—

- (a) is similar to a fund mentioned in relation to Type 2 or 3, and
- (b) is established for the exclusive benefit of charities by or under a provision relating to any particular charities or class of charities contained in an Act.

#### *Type 5*

An interest in land, other than an interest held as security for a debt.

#### *Type 6*

Any of the following issued by Her Majesty's Government in the United Kingdom—

- (a) bills,
- (b) Certificates of Tax Deposit,
- (c) Savings Certificates, and
- (d) Tax Reserve Certificates.

#### *Type 7*

Northern Ireland Treasury Bills.

#### *Type 8*

Units in a unit trust scheme (as defined in section 237(1) of FISMA 2000) or in a recognised scheme (as defined in section 237(3) of FISMA 2000).

“Units” is defined in section 237(2) of FISMA 2000.

#### *Type 9*

A deposit with a bank (as defined in section 991)—

- (a) in respect of which interest is payable at a commercial rate, and

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- (b) which is not made as part of an arrangement under which a loan is made by the bank to some other person.

*Type 10*

A deposit with—

- (a) the National Savings Bank,
- (b) a building society, or
- (c) a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the deposit is taken.

*Type 11*

Certificates of deposit (including uncertificated eligible debt security units as defined in section 986(3)).

*Type 12*

A loan or other investment as to which an officer of Revenue and Customs is satisfied, on a claim, that it is made for the benefit of the charitable trust and not for the avoidance of tax (whether by the trust or any other person).

## **559 Securities which are approved charitable investments**

- (1) The investments to which this section applies are investments in securities—
  - (a) issued or guaranteed by the government of a member State of the European Union,
  - (b) issued or guaranteed by the government or a governmental body of any territory or part of a territory,
  - (c) issued by an international entity listed in the Annex to Council Directive [2003/48/EC](#) (directive on taxation of interest payments),
  - (d) issued by an entity meeting the four criteria set out at the end of that Annex,
  - (e) issued by a building society,
  - (f) issued by a credit institution which operates on mutual principles and which is authorised by an appropriate governmental body in the territory in which the securities are issued,
  - (g) issued by an open-ended investment company,
  - (h) issued by a company and listed on a recognised stock exchange, or
  - (i) issued by a company but not listed on a recognised stock exchange.
- (2) Subsection (1) is subject to section 560.
- (3) In this section and in section 560—
  - “debentures” includes—
    - (a) debenture stock and bonds (whether constituting a charge on assets or not), and
    - (b) loan stock or notes,
  - “open-ended investment company” is to be read in accordance with section 468A(2) to (4) of ICTA,
  - “securities” includes shares and debentures, and
  - “shares” includes stocks.

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## 560 Conditions to be met for some securities

- (1) Section 559 does not apply to an investment by virtue of subsection (1)(b), (c) or (d) of that section unless—
- (a) condition A is met in relation to the securities, and
  - (b) if the securities are shares or debenture stock, condition B is met in relation to the securities.

But see subsection (3) of this section.

- (2) In the case of an investment in securities issued by a company which is incorporated, section 559 does not apply to the investment by virtue of subsection (1)(i) of that section unless—
- (a) condition A is met in relation to the securities,
  - (b) if the securities are shares or debenture stock, condition B is met in relation to the securities, and
  - (c) condition C is met in relation to the company.

But see subsection (3) of this section.

- (3) Conditions A and B need not be met if the securities are traded or quoted on a money market supervised by the government or a governmental body of any territory or part of a territory.
- (4) Condition A is that the securities are traded or quoted on—
- (a) a recognised investment exchange (as defined in section 285(1) of FISMA 2000), or
  - (b) an investment exchange which constitutes the principal or only market established in a territory on which securities admitted to official listing are dealt in or traded.
- (5) Condition B is that—
- (a) the securities are fully paid up,
  - (b) the terms of the issue of the securities require them to be fully paid up within the period of 9 months beginning with the day after the day on which they are issued, or
  - (c) the securities are shares issued with no nominal value.
- (6) Condition C is that—
- (a) throughout the last business day before the investment day, the company has total issued and paid up share capital of at least £1,000,000 (or the equivalent of £1,000,000 in some other currency), and
  - (b) in each of the five years immediately before the calendar year in which the investment day falls, the company paid a dividend on all the shares issued by the company (excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for dividend for that year).

- (7) For the purposes of the words in brackets in subsection (6)(a) use the exchange rate prevailing in the United Kingdom at the close of business on the last business day before the investment day.

- (8) For the purposes of subsection (6)(b) a company formed—
- (a) to take over the business of another company or other companies, or

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- (b) to acquire the securities of, or control of, another company or other companies, is treated as having paid a dividend in any year in which a dividend has been paid by the other company or all of the other companies (as the case may be).
- (9) It is irrelevant that the company is formed for other purposes in addition to those mentioned in paragraph (a) or (b) of subsection (8).
- (10) In this section—
  - “business day” means, in relation to an investment, a business day in the place where the investment is made, and
  - “the investment day” means, in relation to an investment, the day on which the investment is made.

## **561 Approved charitable loans**

- (1) A loan is an approved charitable loan for the purposes of section 543 (meaning of “non-charitable expenditure”) if it meets conditions A and B.
- (2) Condition A is that the loan is not made by way of investment.
- (3) Condition B is that either—
  - (a) the loan is made to another charity for charitable purposes only,
  - (b) it is made to a beneficiary of the charitable trust in the course of carrying out the purposes of the charitable trust,
  - (c) it consists of money placed on current account with a bank otherwise than as part of an arrangement under which a loan is made by a bank to some other person, or
  - (d) an officer of Revenue and Customs is satisfied, on a claim, that the loan is made for the benefit of the charitable trust and not for the avoidance of tax (whether by the charitable trust or by some other person).
- (4) In this section “bank” has the meaning given by section 991.

*Carry back of excess non-charitable expenditure*

## **562 Excess expenditure treated as non-charitable expenditure of earlier years**

- (1) This section applies if a charitable trust's non-charitable expenditure for a tax year exceeds its available income and gains for the tax year.
- (2) The excess is the charitable trust's “excess expenditure” for the tax year.
- (3) The charitable trust's excess expenditure for the tax year is treated for the purposes of this Part as non-charitable expenditure for earlier tax years so far as it can be attributed to earlier tax years under section 563.
- (4) For the purposes of this Part a charitable trust's “available income and gains” for a tax year is the sum of—
  - (a) the charitable trust's total income for the tax year (ignoring any restrictions on the exemptions under this Part which result from sections 539(2) and 541),
  - (b) any chargeable gains accruing to the charitable trust in the tax year (ignoring any restriction on the exemption under section 256(1) of TCGA 1992 which results from section 256(4) of that Act),

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- (c) the charitable trust's attributable income and gains for the tax year (see section 540), and
  - (d) any non-taxable sums received by the charitable trust in the tax year.
- (5) In subsection (4) “non-taxable sums” means donations, legacies and other sums of a similar nature which, ignoring exemptions from income tax under this Part and from capital gains tax under section 256 of TCGA 1992, are not liable to income tax or capital gains tax.

### **563 Rules for attributing excess expenditure to earlier years**

- (1) The rules in this section apply for attributing a charitable trust's excess expenditure for a tax year to earlier tax years under section 562.
- (2) The excess expenditure for a tax year may be attributed to an earlier tax year if—
  - (a) the earlier tax year ends not more than 6 years before the end of the tax year in question, and
  - (b) the charitable trust's available income and gains for the earlier tax year exceed its non-charitable expenditure for the earlier tax year.
- (3) If the conditions in subsection (2) are met in the case of more than one earlier tax year, the excess expenditure is to be attributed to a later tax year in priority to an earlier tax year.
- (4) The amount of excess expenditure that is to be attributed to an earlier tax year must not be greater than the amount by which the charitable trust's available income and gains for the earlier tax year exceed its non-charitable expenditure for the earlier tax year.
- (5) For the purposes of subsections (2)(b) and (4) the charitable trust's non-charitable expenditure for the earlier tax year includes any excess expenditure attributed to the earlier tax year as a result of a previous operation of this section, but ignores the attribution in question.

### **564 Adjustments in consequence of section 562**

Such adjustments must be made (whether by way of the making of assessments or otherwise) as may be required in consequence of section 562.

## **PART 11**

### **MANUFACTURED PAYMENTS AND REPOS**

## **CHAPTER 1**

### **INTRODUCTION**

### **565 Overview of Part**

- (1) This Part is about the income tax treatment of some arrangements for the transfer of securities.

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- (2) Chapter 2 deals with arrangements for the transfer of securities under which provision is made for the payment of amounts representative of dividends or interest in respect of the securities.
- (3) Chapter 3 prevents parties to stock lending arrangements (see section 568) and repos (see section 569) from being entitled to tax credits in some circumstances.
- (4) Chapter 4 brings within the rules in Chapters 2 and 3—
  - (a) some stock lending arrangements under which the dividends or interest in respect of the transferred securities are paid to a person other than the lender, and
  - (b) some repos where the original owner is not entitled to the dividends or interest in respect of the transferred securities.
- (5) Chapter 5 deals with differences between the sale and repurchase price under repos.
- (6) Chapter 6 contains powers to modify some of the provisions about repos.

#### **566 Meaning of “UK shares” and “UK securities”**

- (1) This section applies for the purposes of this Part.
- (2) “UK shares” means shares in a UK resident company.
- (3) “UK securities” means securities of—
  - (a) the government of the United Kingdom,
  - (b) a local authority in the United Kingdom,
  - (c) another public authority in the United Kingdom, or
  - (d) a UK resident company or other UK resident body.
- (4) But “UK securities” does not include UK shares.
- (5) In this section “securities” includes loan stock or any similar security.

#### **567 Meaning of “overseas securities” and “overseas dividend”**

- (1) This section applies for the purposes of this Part.
- (2) “Overseas securities” means shares, stock or other securities issued by—
  - (a) a government, local authority or other public authority of a territory outside the United Kingdom, or
  - (b) another non-UK resident body of persons.
- (3) “Overseas dividend” means any interest, dividend or other annual payment payable in respect of overseas securities.
- (4) In this section “securities” includes loan stock or any similar security.

#### **568 Meaning of “stock lending arrangement”**

- (1) For the purposes of this Part there is a stock lending arrangement in respect of securities if—
  - (a) a person (“the lender”) has transferred the securities to another person (“the borrower”) otherwise than by way of sale,

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- (b) the securities are UK shares, UK securities or overseas securities,
  - (c) the transfer is under an arrangement between the lender and the borrower, and
  - (d) under the arrangement, the borrower is required to transfer the securities back to the lender otherwise than by way of sale.
- (2) The reference in subsection (1)(d) to the transfer of the securities back to the lender includes a reference to—
  - (a) a transfer within subsection (3), and
  - (b) a payment within subsection (5).
- (3) A transfer is within this subsection if it is a transfer to the lender of securities of the same description as the securities—
  - (a) in accordance with a requirement to do so, or
  - (b) in exercise of a power to substitute securities of the same description for the securities that are required to be transferred back.
- (4) For the purposes of subsection (3), securities are taken to be of the same description as other securities if (and only if) they—
  - (a) are in the same quantities,
  - (b) give the same rights against the same persons, and
  - (c) are of the same type and nominal value,
 as the other securities.
- (5) A payment is within this subsection if it is a payment to the lender, in pursuance of a redemption obligation, of an amount equal to the amount of the entitlement under the redemption obligation.
- (6) A redemption obligation is an obligation that arises on a person's becoming entitled to receive an amount in respect of the redemption of the securities.

## 569 Meaning of “repo”

- (1) For the purposes of this Part there is a repo in respect of securities if conditions A, B and C are met.
- (2) Condition A is that a person (“the original owner”) has agreed to sell the securities to another person (“the interim holder”).
- (3) Condition B is that the securities are UK shares, UK securities or overseas securities.
- (4) Condition C is that the original owner or a person connected with the original owner—
  - (a) is required to buy back the securities by the agreement or a related agreement,
  - (b) is required to buy back the securities as a result of the exercise of an option acquired under the agreement or a related agreement, or
  - (c) exercises an option to buy back the securities which was acquired under the agreement or a related agreement.

## 570 Meaning of “buying back” securities etc

- (1) This section applies for the purposes of this Part, in the context of a repo.
- (2) References to buying back securities include references to—
  - (a) buying similar securities, and



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- (b) in the case of a person connected with the person who is the original owner under the repo, buying the securities sold by the original owner or similar securities.
- (3) Subsection (2) applies even if the person buying the securities has not held them before.
- (4) References to repurchase or a repurchaser are to be read accordingly.
- (5) For the purposes of subsection (2) securities are similar if they give their holders—
  - (a) the same rights against the same persons as to capital and distributions, interest and dividends, and
  - (b) the same remedies to enforce those rights.
- (6) Subsection (5) applies even if there is a difference in—
  - (a) the total nominal amounts of the securities,
  - (b) the form in which they are held, or
  - (c) the manner in which they can be transferred.

## **571 Meaning of “related” agreements**

Agreements are related for the purposes of this Part if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

## **CHAPTER 2**

### **MANUFACTURED PAYMENTS**

#### *Introduction*

## **572 Overview of Chapter**

This Chapter is about the situation where a person—

- (a) pays another person an amount which is representative of—
  - (i) dividends on UK shares,
  - (ii) periodical payments of interest on UK securities, or
  - (iii) overseas dividends on overseas securities, and
- (b) does so under a requirement of an arrangement between them for the transfer of the UK shares, UK securities or overseas securities concerned.

#### *Manufactured dividends on UK shares*

## **573 Manufactured dividends on UK shares**

- (1) This section applies if a person—
  - (a) pays another person an amount (a “manufactured dividend”) which is representative of a dividend on UK shares, and

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- (b) does so under a requirement of an arrangement between them for the transfer of the shares.
- (2) The Income Tax Acts apply in relation to the recipient, and persons claiming title through or under the recipient, as if the manufactured dividend were a dividend on the shares.
- (3) If the payer is a UK resident company, the Income Tax Acts apply in relation to the payer as if the manufactured dividend were a dividend of the company.
- (4) If the payer is UK resident and is not a company, the Income Tax Acts apply in relation to the payer subject to sections 574 and 575 (allowable deductions).
- (5) This section is subject to—
  - (a) section 576 (manufactured dividends on UK shares: Real Estate Investment Trusts),
  - (b) section 583 (manufactured payments exceeding underlying payments), and
  - (c) section 585 (power to deal with other special cases).

#### **574 Allowable deductions: matching**

- (1) This section applies if a person who pays a manufactured dividend as mentioned in section 573(1) is UK resident and is not a company.
- (2) An amount equal to the lesser of—
  - (a) the amount of the manufactured dividend, and
  - (b) the amount of the dividend of which the manufactured dividend is representative,
 is allowable as a deduction for income tax purposes, subject to subsection (3).
- (3) It is allowable only so far as—
  - (a) it is not otherwise deductible, and
  - (b) it falls within subsection (4) or (7).
- (4) An amount falls within this subsection so far as the payer—
  - (a) receives either the dividend which is represented by the manufactured dividend or a payment which is representative of that dividend, and
  - (b) is chargeable to income tax on the dividend or payment received.
- (5) An amount falls within subsection (4) only if the amount of the dividend or payment received is received by the payer in—
  - (a) the tax year in which the payer pays the manufactured dividend, or
  - (b) the tax year immediately before, or immediately after, that year.
- (6) An amount which falls within subsection (4) is allowable as a deduction only from the amount of the dividend or payment received on which the payer is chargeable to income tax.
- (7) An amount falls within this subsection so far as the payer—
  - (a) is treated under section 607 (treatment of price differences under repos) as receiving a payment of interest in respect of the shares, and
  - (b) is chargeable to income tax on the payment.

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- (8) An amount which falls within subsection (7) is allowable as a deduction in calculating the net income of the payer (see Step 2 of the calculation in section 23).
- (9) See section 575 for a further qualification to the rule in subsection (2).
- (10) For the purposes of subsection (3)(a) an amount is deductible if it is—
  - (a) deductible in calculating any of the payer's profits or gains for income tax purposes, or
  - (b) deductible for those purposes in calculating the net income of the payer.

### **575 Allowable deductions: restriction on double-counting**

- (1) This section applies if an amount has been allowed as a deduction under section 574(2) by reference to the whole or part of—
  - (a) the dividend or payment mentioned in section 574(4)(a), or
  - (b) the deemed payment of interest mentioned in section 574(7)(a).
- (2) No further deduction is allowable by reference to all or part of the matched portion of the dividend, payment or deemed payment.
- (3) The “matched portion” of the dividend, payment or deemed payment means—
  - (a) the whole of it, if the amount has been allowed as a deduction by reference to the whole of it, or
  - (b) the part of it by reference to which the amount has been allowed as a deduction, in any other case.

### **576 Manufactured dividends on UK shares: Real Estate Investment Trusts**

- (1) This section applies (instead of section 573(2) and (3)) if—
  - (a) a person pays a manufactured dividend as mentioned in section 573(1), and
  - (b) the manufactured dividend is representative of a dividend which is—
    - (i) paid by a company to which Part 4 of FA 2006 applies (Real Estate Investment Trusts) in respect of profits of C (tax-exempt), or
    - (ii) paid by the principal company of a group to which that Part applies in respect of profits of G (property rental business).
- (2) This section applies only so far as the manufactured dividend is representative of such a dividend.
- (3) The Income Tax Acts apply in relation to the recipient, and persons claiming title through or under the recipient, as if the manufactured dividend were a dividend to which section 121 of FA 2006 applied (distributions treated as UK property business profits).
- (4) This section is subject to—
  - (a) section 583 (manufactured payments exceeding underlying payments), and
  - (b) section 585 (power to deal with other special cases).

### **577 Statements about manufactured dividends**

- (1) Subsections (3) to (7) apply to a person who—
  - (a) pays a manufactured dividend as mentioned in section 573(1), and

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- (b) is not within the charge to corporation tax.
- (2) But those subsections do not apply so far as the manufactured dividend is representative of a dividend which is—
  - (a) paid by a company to which Part 4 of FA 2006 applies (Real Estate Investment Trusts) in respect of profits of C (tax-exempt), or
  - (b) paid by the principal company of a group to which that Part applies in respect of profits of G (property rental business).
- (3) The person must, at the same time as paying the manufactured dividend, give the recipient a statement.
- (4) The statement must set out—
  - (a) the amount of the manufactured dividend,
  - (b) the date of its payment, and
  - (c) the amount of associated tax credit.
- (5) The statement must be in writing.
- (6) The amount of associated tax credit is the amount of tax credit to which the recipient, or a person claiming title through or under the recipient—
  - (a) is entitled in respect of the manufactured dividend as a result of section 573(2) of this Act or paragraph 2(3)(b) of Schedule 23A to ICTA (manufactured dividend treated as dividend), or
  - (b) would be so entitled if all the conditions for a tax credit had been met in the case of the deemed dividend and the recipient or that person.
- (7) The duty under subsection (3) to give a statement is enforceable by the recipient.
- (8) For provisions corresponding to subsections (3) to (7) which apply if the payer of a manufactured dividend is within the charge to corporation tax see—
  - (a) section 234A of ICTA (by virtue of paragraph 2(2)(b) of Schedule 23A to ICTA), if the payer is a UK resident company, and
  - (b) paragraph 2(6) to (8) of Schedule 23A to ICTA, if the payer is a non-UK resident company within the charge to corporation tax.
- (9) For a power for regulations to make provision corresponding to subsections (3) to (7) for a case within subsection (2), see section 973 as applied by section 918(3) (and in particular section 974(1)(k)).

### *Manufactured interest on UK securities*

## **578 Manufactured interest on UK securities**

- (1) This section applies if a person—
  - (a) pays another person an amount (“manufactured interest”) which is representative of a periodical payment of interest on UK securities, and
  - (b) does so under a requirement of an arrangement between them for the transfer of the securities.
- (2) The Income Tax Acts apply in relation to the recipient, and persons claiming title through or under the recipient, as if—

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- (a) the manufactured interest were a periodical payment of interest on the securities, and
  - (b) the gross amount of the deemed interest payment were equal to the gross amount of the interest of which the manufactured interest is representative.
- (3) If the payer is UK resident, or a person acting in the course of a trade carried on in the United Kingdom through a branch or agency, the Income Tax Acts apply in relation to the payer subject to sections 579 and 580 (allowable deductions).
- (4) See also—
  - section 919 (manufactured interest payments by UK residents etc: deduction of income tax at source), and
  - section 920 (foreign payers of manufactured interest: the reverse charge).
- (5) This section is subject to—
  - section 583 (manufactured payments exceeding underlying payments),
  - section 584 (manufactured payments less than underlying payments), and
  - section 585 (power to deal with other special cases).

## **579 Allowable deductions: matching**

- (1) This section applies to a person who pays manufactured interest as mentioned in section 578(1).
- (2) The gross amount of the manufactured interest is allowable for income tax purposes as a deduction in calculating the net income of the payer (see Step 2 of the calculation in section 23).

This is subject to subsection (3).
- (3) It is allowable only so far as—
  - (a) it is not otherwise deductible, and
  - (b) it falls within subsection (4), (6) or (7).
- (4) An amount falls within this subsection so far as the payer—
  - (a) receives either the periodical payment of interest which is represented by the manufactured interest or a payment which is representative of the periodical payment of interest, and
  - (b) is chargeable to income tax on the payment received.
- (5) See section 679 (interest on securities involving accrued income losses: general) for the amount chargeable to income tax in a case where that section applies.
- (6) An amount falls within this subsection so far as—
  - (a) the payer is, by virtue of Chapter 2 of Part 12 (accrued income profits), chargeable to income tax on qualifying accrued income profits in respect of transfers of securities, and
  - (b) the transfers are subject to the arrangement giving rise to the payment of manufactured interest.
- (7) An amount falls within this subsection so far as the payer—
  - (a) is treated under section 607 (treatment of price differences under repos) as receiving a payment of interest in respect of the securities, and

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- (b) is chargeable to income tax on the payment.
- (8) See section 580 for a further qualification to the rule in subsection (2).
- (9) For the purposes of subsection (3)(a) an amount is deductible if it is—
  - (a) deductible in calculating any of the payer's profits or gains for income tax purposes, or
  - (b) deductible for those purposes in calculating the net income of the payer.
- (10) In this section “qualifying accrued income profits” means accrued income profits which are treated as made—
  - (a) under section 628(5), or
  - (b) under section 630(2) in respect of a transfer of variable rate securities.

### **580 Allowable deductions: restriction on double counting**

- (1) This section applies if an amount has been allowed as a deduction under section 579(2) by reference to the whole or part of—
  - (a) the periodical payment of interest, or other payment, mentioned in section 579(4)(a),
  - (b) the sum mentioned in section 579(6)(a), or
  - (c) the deemed payment of interest mentioned in section 579(7)(a).
- (2) No further deduction is allowable by reference to all or part of the matched portion of the payment, sum or deemed payment.
- (3) The “matched portion” of the payment, sum or deemed payment means—
  - (a) the whole of it, if the amount has been allowed as a deduction by reference to the whole of it, or
  - (b) the part of it by reference to which the amount has been allowed as a deduction, in any other case.

### *Manufactured overseas dividends*

### **581 Manufactured overseas dividends**

- (1) This section applies if—
  - (a) a person (“the payer”) pays another person an amount (a “manufactured overseas dividend”) which is representative of an overseas dividend on overseas securities,
  - (b) the payer does so under a requirement of an arrangement between them for the transfer of the securities, and
  - (c) the condition in subsection (2) is met.
- (2) The condition is that—
  - (a) in a case within section 922(1) (manufactured overseas dividends: payments by UK residents etc), the amount required to be deducted as a result of that section has been deducted, or
  - (b) in a case within section 923(1) (foreign payers of manufactured overseas dividends: the reverse charge), the amount of income tax required to be

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accounted for and paid as a result of that section has been accounted for and paid.

- (3) Subsections (4) and (5) apply in relation to the recipient, and all persons claiming title through or under the recipient, for all relevant income tax purposes.
- (4) The manufactured overseas dividend is treated as if it were—
  - (a) an overseas dividend of an amount equal to the gross amount of the manufactured overseas dividend, but
  - (b) paid after the withholding from it, on account of overseas tax, of the amount deducted as a result of section 922 or (as the case may be) accounted for and paid as a result of section 923.
- (5) The amount deducted or accounted for and paid is accordingly to be treated as an amount withheld on account of overseas tax instead of as an amount on account of income tax.
- (6) In this section “relevant income tax purposes” means the purposes of the Income Tax Acts as they apply in relation to—
  - (a) UK residents, and
  - (b) persons carrying on business through a branch or agency in the United Kingdom.

## **582 Powers about manufactured overseas dividends**

- (1) The Treasury may by regulations make provision as mentioned in subsections (2) and (3) about prescribed cases where a person—
  - (a) pays or receives a manufactured overseas dividend as mentioned in section 581(1), or
  - (b) is treated as doing so for any purposes of this Chapter or regulations made under it.
- (2) The regulations may provide for removing or reducing any right of the person to claim relief under Part 18 of ICTA (double taxation relief).
- (3) The regulations may provide for adjusting a relevant amount by reference to a provision which has effect under the law of a territory outside the United Kingdom.
- (4) A “relevant amount” is an amount which is treated for prescribed income tax purposes as the amount paid or payable to a person in respect of a relevant transaction.
- (5) A “relevant transaction” is a sale, repurchase or other transfer of the overseas securities to which the manufactured overseas dividend relates.

### *Special cases*

## **583 Manufactured payments exceeding underlying payments**

- (1) This section applies if—
  - (a) an amount paid by way of manufactured dividend would otherwise exceed the amount of the dividend of which it is representative, or
  - (b) the sum of—

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- (i) an amount paid by way of manufactured interest or manufactured overseas dividend, and
  - (ii) the income tax required to be accounted for and paid in connection with the making of the payment,
- would otherwise exceed the gross amount of the interest or overseas dividend of which it is representative.
- (2) The payment, to the extent of an amount equal to the excess, is treated for the purposes of this Chapter and Chapter 9 of Part 15 as not made under the requirement mentioned in section 573(1)(b), 578(1)(b) or 581(1)(b) (criteria for application of provisions about manufactured payments).
  - (3) Instead it is treated, to that extent, for income tax purposes as a separate fee for entering into the arrangement under which it was made.
  - (4) Subsection (3) applies despite anything in—
    - (a) sections 572 to 582 (main rules about manufactured payments), or
    - (b) Chapter 9 of Part 15 (deduction of income tax at source: manufactured payments).

#### **584 Manufactured payments less than underlying payments**

- (1) This section applies if the sum of—
  - (a) an amount paid by way of manufactured interest or manufactured overseas dividend, and
  - (b) the income tax required to be accounted for and paid in connection with the making of the payment,
 is less than the gross amount of the interest or overseas dividend of which it is representative.
- (2) For the purpose of giving relief under the Income Tax Acts in a case to which section 578 or 581 applies (manufactured interest and manufactured overseas dividends), the gross amount of the manufactured interest or manufactured overseas dividend is treated as being an amount equal to the sum of the amounts mentioned in paragraphs (a) and (b) of subsection (1).
- (3) Subsection (2) applies despite anything in—
  - (a) sections 578 to 582 (main rules about manufactured interest and manufactured overseas dividends), and
  - (b) section 589(3) (meaning of “gross amount” of manufactured overseas dividend).
- (4) In this section “relief” means relief by way of—
  - (a) deduction in calculating profits or gains, or
  - (b) deduction or set off against income.

#### **585 Power to deal with other special cases**

- (1) The Treasury may by regulations make provision about—
  - (a) such manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed,



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- (b) such persons who receive, or become entitled to receive, manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed, or
  - (c) such payers of manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed.
- (2) The provision which may be made is for any prescribed manufactured dividend, manufactured interest, manufactured overseas dividend or person to be treated, in prescribed circumstances, otherwise than as mentioned in—
  - (a) sections 572 to 582 (main rules about manufactured payments), or
  - (b) Chapter 9 of Part 15 (deduction of income tax at source: manufactured payments),for any prescribed income tax purposes.

### *General regulation-making powers*

## **586 Powers about administrative provisions**

- (1) The Treasury may by regulations make provision about—
  - (a) the accounts and other records which are to be kept,
  - (b) the vouchers which are to be issued or produced,
  - (c) the returns which are to be made, and
  - (d) the manner in which amounts required to be deducted, or accounted for and paid, on account of income tax as a result of this Chapter or Chapter 9 of Part 15 are to be accounted for and paid,by payers or recipients of manufactured dividends, manufactured interest or manufactured overseas dividends.
- (2) Regulations under this Chapter or Chapter 9 of Part 15 about any liability to account for income tax may contain any of the following—
  - (a) provision for calculating the amounts to be accounted for,
  - (b) provision, in relation to deciding the amount to be paid on any occasion, for setting other amounts against the amounts to be accounted for,
  - (c) provision as to the liabilities against which amounts accounted for are, or are not, to be set for income tax purposes or corporation tax purposes,
  - (d) provision modifying, or applying (with or without modifications), any enactments contained in the Tax Acts.
- (3) The Treasury may by regulations provide for prescribed provisions of TMA 1970 to apply for income tax purposes in relation to—
  - (a) manufactured dividends,
  - (b) manufactured interest, or
  - (c) manufactured overseas dividends,with such modifications, specified in the regulations, as the Treasury consider appropriate.
- (4) The Treasury may by regulations make further provision about the administration, assessment, collection and recovery of amounts required to be deducted, or accounted for and paid, on account of income tax as a result of—
  - (a) this Chapter, or

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(b) Chapter 9 of Part 15.

## **587 Power for manufactured payments to be eligible for relief**

- (1) The Treasury may by regulations provide for any—
  - (a) manufactured dividend,
  - (b) manufactured interest, or
  - (c) manufactured overseas dividend,
 paid to any person to be treated, in such circumstances and to such extent as may be prescribed in the regulations, as exempt pension income of the recipient.
- (2) “Exempt pension income” means income which is eligible for relief from income tax as a result of section 613(4) or 614(2), (3) or (4) of ICTA or section 186 of FA 2004 (exemptions about pensions and annuities).

## **588 Regulation-making powers: general**

Regulations under this Chapter may make different provision for different cases.

### *Interpretation*

## **589 Meaning of “gross amount”: interest and manufactured overseas dividends**

- (1) This section applies for the purposes of this Chapter.
- (2) The gross amount of any interest or payment is the amount of the interest or payment before the making of any deduction of income tax that is required to be deducted from it on its being paid or made.
- (3) The gross amount of a manufactured overseas dividend is an amount equal to the gross amount of the overseas dividend of which the manufactured overseas dividend is representative.
- (4) The gross amount of an overseas dividend is the sum of—
  - (a) so much of the overseas dividend as remains after the deduction of any overseas tax chargeable on it,
  - (b) the amount of any overseas tax so deducted, and
  - (c) the amount of any overseas tax credit in respect of the overseas dividend.

## **590 Meaning of “relevant withholding tax”**

- (1) This section applies for the purposes of this Chapter.
- (2) “Relevant withholding tax”, in relation to the gross amount of a manufactured overseas dividend, means an amount of income tax representative of the sum of—
  - (a) any amount that would have been deducted by way of overseas tax from an overseas dividend on the overseas securities of the same gross amount as the manufactured overseas dividend, and
  - (b) the amount of any overseas tax credit in respect of such an overseas dividend.

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- (3) The Treasury may by regulations make provision about the rates of relevant withholding tax which are to apply in relation to manufactured overseas dividends in relation to different overseas territories.
- (4) The Treasury must, in prescribing these rates, have regard to—
  - (a) the rates at which overseas tax would have fallen to be deducted, and
  - (b) the rates of overseas tax credits,in overseas territories, or in the particular overseas territory, in respect of payments of overseas dividends on overseas securities.

## **591 Interpretation of other terms used in Chapter**

- (1) In this Chapter—
  - “C (tax-exempt)” has the meaning given by section 105(3) of FA 2006,
  - “G (property rental business)” has the meaning given by paragraph 2 of Schedule 17 to FA 2006,
  - “group” and “principal company” have the meanings given by section 134 of FA 2006,
  - “overseas tax” means tax under the law of a territory outside the United Kingdom,
  - “overseas tax credit” means any credit under the law of a territory outside the United Kingdom in respect of overseas tax which corresponds to a tax credit,
  - “prescribed” means prescribed in regulations under this Chapter, and
  - “transfer” includes a sale or other disposal.
- (2) References in this Chapter to a trade carried on through a branch or agency are to be read, in relation to a company, as references to a trade carried on through a permanent establishment.

## **CHAPTER 3**

### **TAX CREDITS: STOCK LENDING ARRANGEMENTS AND REPOS**

#### *Stock lending arrangements*

## **592 No tax credits for borrower under stock lending arrangement**

- (1) This section applies if—
  - (a) there is a stock lending arrangement in respect of UK shares,
  - (b) a qualifying distribution is made to the person who is the borrower under the arrangement,
  - (c) the qualifying distribution is, or is a payment representative of, a dividend in respect of the UK shares, and
  - (d) a manufactured dividend representative of the dividend is paid by the borrower in respect of any UK shares in respect of which the arrangement is made.

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- (2) The borrower is not entitled to a tax credit under section 397(1) of ITTOIA 2005 (tax credits for qualifying distributions) in respect of the distribution.
- (3) If the borrower is UK resident, section 399(2) of ITTOIA 2005 (recipients of qualifying distributions treated as having paid income tax at dividend ordinary rate on them) does not apply in respect of the distribution.

### *Repos*

#### **593 No tax credits for interim holder under repo**

- (1) This section applies if—
  - (a) there is a repo in respect of UK shares,
  - (b) under the repo, the original owner has transferred the UK shares to the interim holder,
  - (c) a qualifying distribution is made to the interim holder,
  - (d) the qualifying distribution is, or is a payment representative of, a dividend in respect of the UK shares, and
  - (e) a manufactured dividend representative of the dividend is paid by the interim holder in respect of any UK shares in respect of which the repo is made.
- (2) The interim holder is not entitled to a tax credit under section 397(1) of ITTOIA 2005 (tax credits for qualifying distributions) in respect of the distribution.
- (3) If the interim holder is UK resident, section 399(2) of ITTOIA 2005 (recipients of qualifying distributions treated as having paid income tax at dividend ordinary rate on them) does not apply in respect of the distribution.

#### **594 No tax credits for original owner under repo**

- (1) This section applies if—
  - (a) there is a repo in respect of UK shares,
  - (b) under the repo, the original owner has transferred the UK shares to the interim holder,
  - (c) a qualifying distribution is made,
  - (d) the qualifying distribution is a manufactured dividend paid under the repo in respect of the UK shares by the interim holder to the original owner, and
  - (e) the repo is not such that the actual dividend which the manufactured dividend represents is receivable by a person other than the original owner.
- (2) The original owner is not entitled to a tax credit under section 397(1) of ITTOIA 2005 (tax credits for qualifying distributions) in respect of the distribution.
- (3) If the original owner is UK resident, section 399(2) of ITTOIA 2005 (recipients of qualifying distributions treated as having paid income tax at dividend ordinary rate on them) does not apply in respect of the distribution.

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## *Interpretation*

### **595 Meaning of “manufactured dividend”**

In this Chapter “manufactured dividend” has the same meaning as in Chapter 2 (see section 573(1)(a)).

## **CHAPTER 4**

### **DEEMED MANUFACTURED PAYMENTS**

#### *Stock lending arrangements*

### **596 Deemed manufactured payments: stock lending arrangements**

- (1) This section applies if—
  - (a) there is a stock lending arrangement in respect of securities,
  - (b) a dividend or interest on the securities is paid, as a result of the arrangement, to a person other than the person who is the lender under the arrangement, and
  - (c) no provision is made for securing that the lender receives payments representative of the dividend or interest.
- (2) The rules about manufactured payments apply as if the person who is the borrower under the arrangement—
  - (a) were required, under the arrangement, to pay the lender an amount representative of the dividend or interest, and
  - (b) discharged the requirement when the dividend or interest was paid.
- (3) But the borrower is not entitled (whether as a result of the rules about manufactured payments or otherwise) to an income deduction in respect of the deemed requirement to pay or the deemed payment.
- (4) “Income deduction” means—
  - (a) a deduction in calculating profits or gains for income tax purposes, or
  - (b) a deduction in calculating net income.
- (5) For the purposes of this section, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.

### **597 Deemed interest: cash collateral under stock lending arrangements**

- (1) This section applies if—
  - (a) the borrower under a stock lending arrangement is treated under section 596(2) as paying under the arrangement an amount representative of a dividend or interest on any securities (“the relevant securities”),
  - (b) an amount of money (“cash collateral”) is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,

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- (c) the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and
  - (d) the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage (within the meaning given by section 840ZA of ICTA).
- (2) If this section applies—
- (a) the Income Tax Acts apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and
  - (b) the amount of the interest is calculated in accordance with subsections (3) to (7).
- (3) The interest is treated for the purposes of the Income Tax Acts as if it were received on the date (“the return date”) on which the borrower transfers the relevant securities back to the lender.
- (4) The interest is treated for the purposes of the Income Tax Acts as if it were payable in respect of the period (“the interest period”)—
- (a) beginning with the date on which the lender transfers the relevant securities to the borrower, and
  - (b) ending with the return date.
- (5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.
- (6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—
- (a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and
  - (b) in any other case, the amount of the cash collateral as at the return date.
- (7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.
- (8) This section needs to be read with sections 598 and 599.

## **598 Cash collateral under stock lending arrangements: supplementary**

- (1) This section supplements section 597.
- (2) The interest which the borrower is treated as receiving under section 597 is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).
- (3) The fact that the borrower is treated as receiving an amount of interest under section 597 does not imply that the interest is payable by the lender or any other person.
- (4) For the purposes of section 597—
  - (a) any reference in that section to the transfer of securities back has the same meaning as the reference in section 568(1)(d) (see subsections (2) to (6) of section 568), but

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- (b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as transferring them back on the date on which it becomes so apparent.
- (5) For the purposes of section 597 it does not matter—
  - (a) whether the cash collateral is payable by the borrower or by any other person,
  - (b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement, or
  - (c) whether collateral in another form is also provided in connection with the stock lending arrangement.
- (6) See section 599—
  - (a) for provision treating some arrangements as stock lending arrangements for the purposes of section 597 and this section, and
  - (b) for provision treating some amounts as cash collateral for those purposes.

#### **599 Sections 597 and 598: quasi-stock lending arrangements and quasi-cash collateral**

- (1) For the purposes of sections 597 and 598, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.
- (2) For the purposes of sections 597 and 598, in relation to a stock lending arrangement or quasi-stock lending arrangement—
  - (a) quasi-cash collateral is treated as if it were cash collateral, and
  - (b) the amount of that cash collateral is taken to be the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement.
- (3) If—
  - (a) section 597 applies in relation to a quasi-stock lending arrangement, and
  - (b) the person for whom the tax advantage was designed to be obtained is a person (“the other person”) other than the borrower under the arrangement,that section and section 598 have effect as if the other person were the person who receives the amount of interest mentioned in that section.
- (4) If section 597 applies in relation to a quasi-stock lending arrangement—
  - (a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,
  - (b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and
  - (c) any reference in that section and section 598 to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.
- (5) In subsection (4)(c) “property” means property in any form.

#### **600 Meaning of “quasi-stock lending arrangements” and “quasi-cash collateral”**

- (1) This section applies for the purposes of sections 596 to 599.

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- (2) “Quasi-stock lending arrangement” means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—
  - (a) a person (“the lender”) transfers securities to another person (“the borrower”) otherwise than by way of sale, and
  - (b) a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person otherwise than by way of sale.
- (3) For the purposes of subsection (2) it does not matter whether the person on whom the requirement is imposed is the borrower or any other person.
- (4) “Quasi-cash collateral”, in relation to a stock lending arrangement or quasi-stock lending arrangement, means—
  - (a) any money which is payable for a relevant purpose, and
  - (b) any other property which is transferable for a relevant purpose.
- (5) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—
  - (a) the lender under the stock lending arrangement or quasi-stock lending arrangement, or
  - (b) a person connected with the lender,for the purpose of securing the discharge of the requirement mentioned in subsection (2)(b).
- (6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.
- (7) In this section “property” means property in any form.

### *Repos*

## **601 Repo cases in which deeming rules apply**

- (1) Section 602 applies if—
  - (a) there is a repo in respect of securities,
  - (b) a distribution becomes payable in respect of the securities, and
  - (c) each of the conditions in the first or second set of relevant conditions is met.
- (2) This is the first set of relevant conditions—

### *Condition 1.1*

As a result of the repo, the distribution is receivable otherwise than by the person who is the original owner under the repo.

### *Condition 1.2*

There is no requirement under the sale agreement or the related agreement (if any) for a person to pay to the original owner, on or before the date when the repurchase price of the securities becomes due, an amount representative of the distribution.



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### Condition 1.3

It is reasonable to assume that, in deciding the repurchase price of the securities, account was taken of the fact that the distribution is receivable otherwise than by the original owner.

(3) This is the second set of relevant conditions—

### Condition 2.1

The distribution is receivable otherwise than by the person who is the original owner under the repo.

### Condition 2.2

There is no requirement under the sale agreement or the related agreement (if any) for a person to pay to the original owner, on or before the date when the repurchase price of the securities becomes due, an amount representative of the distribution.

### Condition 2.3

The original owner or a person connected with the original owner is required under the sale agreement or the related agreement (if any) to pay an amount representative of the distribution.

### Condition 2.4

It is reasonable to assume that, in deciding the repurchase price of the securities, account was taken of the circumstances mentioned in Conditions 2.1 to 2.3.

#### Modifications etc. (not altering text)

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

## 602 Deemed manufactured payments: repos

- (1) If this section applies, the rules about manufactured payments apply as if the person from whom the securities are to be repurchased (“A”)—
- (a) were required, under the repo, to pay the repurchaser an amount representative of the distribution, and
  - (b) discharged the requirement when [<sup>F112</sup>the distribution was payable].
- (2) The amount mentioned in subsection (1)(a) is—
- (a) in the case of a dividend on UK shares (other than one within paragraph (b)), the amount of the dividend,
  - (b) in the case of a dividend on UK shares so far as—
    - (i) paid by a company to which Part 4 of FA 2006 applies in respect of profits of C (tax-exempt), or
    - (ii) paid by a group to which that Part applies in respect of profits of G (property rental business),the gross amount of the dividend,

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- (c) in the case of a periodical payment of interest on UK securities, the gross amount of the periodical payment of interest, and
  - (d) in the case of an overseas dividend on overseas securities, the gross amount of the overseas dividend.
- (3) But if A is not the person to whom the original owner agreed to sell the securities, A is not entitled (whether as a result of the rules about manufactured payments or otherwise) to an income deduction as a result of subsection (1).
- (4) “Income deduction” means—
- (a) a deduction in calculating profits or gains for income tax purposes, or
  - (b) a deduction in calculating net income.

#### Textual Amendments

**F112** Words in s. 602(1)(b) substituted (with effect in accordance with art. 3 of the commencing S.I.) by [Finance Act 2007 \(c. 11\)](#), s. 47(4), [Sch. 14 para. 22](#); [S.I. 2007/2483](#), art. 3

#### Modifications etc. (not altering text)

**C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), [2\(2\)](#), 3

## 603 Deemed deductions of tax

- (1) This section applies if—
- (a) an amount is treated as paid under section 602(1)(b) (deemed manufactured payments), and
  - (b) as a result, one of these sections applies—
    - (i) section 918 (deduction of income tax at source: manufactured dividends on UK shares: Real Estate Investment Trusts),
    - (ii) section 919 (deduction of income tax at source: manufactured interest on UK securities),
    - (iii) section 922 (deduction of income tax at source: manufactured overseas dividends).
- (2) So far as the deemed payment is representative of a dividend on UK shares—
- (a) paid by a company to which Part 4 of FA 2006 applies in respect of profits of C (tax-exempt), or
  - (b) paid by a group to which that Part applies in respect of profits of G (property rental business),
- any deduction which (as a result of section 918) is required to be made out of the gross amount of the payment is treated as made.
- (3) If the deemed payment is representative of a periodical payment of interest on UK securities, any deduction which (as a result of section 919) is required to be made out of the gross amount of the payment is treated as made.
- (4) If the deemed payment is representative of an overseas dividend on overseas securities, any deduction which (as a result of section 922) is required to be made out of the gross amount of the payment is treated as made.

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**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

**604 Deemed increase in repurchase price: price differences under repos**

- (1) This section applies if—
- (a) an amount is treated as paid under section 602(1)(b) (deemed manufactured payments), and
  - (b) as a result, one of these sections applies—
    - (i) section 573 (manufactured dividends on UK shares),
    - (ii) section 576 (manufactured dividends on UK shares: Real Estate Investment Trusts),
    - (iii) section 578 (manufactured interest on UK securities),
    - (iv) section 581 (manufactured overseas dividends).
- (2) If the deemed payment is representative of a dividend on UK shares (other than one falling within subsection (3)), the repurchase price of the UK shares is treated for the purposes of section 607 (treatment of price differences under repos) as increased by an amount equal to the amount of the dividend.
- (3) So far as the deemed payment is representative of a dividend on UK shares—
- (a) paid by a company to which Part 4 of FA 2006 applies in respect of profits of C (tax-exempt), or
  - (b) paid by a group to which that Part applies in respect of profits of G (property rental business),
- the repurchase price of the UK shares is treated for the purposes of section 607 as increased by the gross amount of the dividend.
- (4) If the deemed payment is representative of a periodical payment of interest on UK securities, the repurchase price of the UK securities is treated for the purposes of section 607 as increased by the gross amount of the periodical payment of interest.
- (5) If the deemed payment is representative of an overseas dividend on overseas securities, the repurchase price of the overseas securities is treated for the purposes of section 607 as increased by the gross amount of the overseas dividend.

**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

**605 Deemed increase in repurchase price: other income tax purposes**

- (1) The deemed increase in the repurchase price which is made by section 604(2), (4) or (5) for the purposes of section 607 also has effect for all other income tax purposes (except sections 601, 602, 604 and this section), if condition A or B is met.

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- (2) Condition A is that, as a result of the increase, there is no difference for the purposes of section 607 between the sale price and the repurchase price.
- (3) Condition B is that, as a result of either of the exceptions in section 608, section 607 does not apply.
- (4) For the effect of the deemed increase of the repurchase price for capital gains tax purposes see section 261F of TCGA 1992.

**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), 2(2), 3

### *Interpretation*

## **606 Interpretation of Chapter**

- (1) This section applies for the purposes of this Chapter.
- (2) “C (tax-exempt)” has the meaning given by section 105(3) of FA 2006.
- (3) “Distribution” means—
  - (a) in the case of UK shares, a dividend,
  - (b) in the case of UK securities, a periodical payment of interest, and
  - (c) in the case of overseas securities, an overseas dividend.
- (4) “G (property rental business)” has the meaning given by paragraph 2 of Schedule 17 to FA 2006.
- (5) “Group” has the meaning given by section 134 of FA 2006.
- (6) “Manufactured dividend” has the same meaning as in Chapter 2 (see section 573(1)(a)).
- (7) “The repurchase price of the securities” means the amount which, under the sale agreement or the related agreement (if any), the original owner or connected person is to pay for the securities bought back.
- (8) “The rules about manufactured payments” means—
  - (a) Chapter 2 of this Part and regulations made under it,
  - (b) Chapter 3 of this Part,
  - (c) Chapter 9 of Part 15 and regulations made under it, and
  - (d) regulations made under section 973, so far as they apply to a person who pays a manufactured dividend.
- (9) Section 589 (meaning of “gross amount” of interest, manufactured overseas dividends and overseas dividends for purposes of Chapter 2) also applies for the purposes of this Chapter.
- (10) Section 918(7) (meaning of “gross amount” of manufactured dividend in Real Estate Investment Trust case) also applies for the purposes of this Chapter.

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**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

## CHAPTER 5

### PRICE DIFFERENCES UNDER REPOS

#### *Main tax treatment*

#### **607 Treatment of price differences under repos**

- (1) This section applies if—
  - (a) there is a repo in respect of securities, and
  - (b) under the repo, the original owner has transferred the securities to the interim holder.
- (2) Any difference between the sale price of the securities and the repurchase price of the securities is treated for income tax purposes as follows.
- (3) If the repurchase price is more than the sale price, the difference is treated as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price.
- (4) If the sale price is more than the repurchase price, the difference is treated as a payment of interest made by the interim holder on a deemed loan from the repurchaser of an amount equal to the repurchase price.
- (5) In either case, the payment of interest is treated for income tax purposes as—
  - (a) becoming due when the repurchase price becomes due, and
  - (b) paid when that price is paid.
- (6) Subsection (7) applies in calculating the sale price for the purposes of this section if the repo involves the exercise of an option (see section 569(4)(b) and (c)).
- (7) The amount of any consideration given for the option is—
  - (a) in a case falling within section 569(4)(b), added to what would otherwise be the price, and
  - (b) in a case falling within section 569(4)(c), subtracted from what would otherwise be the price.
- [<sup>F113</sup>(7A) A company within the charge to corporation tax is not to be treated as a result of this section as making any payment of interest for income tax purposes.]
- (8) This section is subject to section 608 (exceptions) and Chapter 6 (powers to modify repo provisions: non-standard repo cases and redemption arrangements).

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### Textual Amendments

**F113** S. 607(7A) inserted (with effect in accordance with art. 3 of the commencing S.I.) by [Finance Act 2007 \(c. 11\)](#), s. 47(4), [Sch. 14 para. 23](#); S.I. 2007/2483, art. 3

### Modifications etc. (not altering text)

**C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), [2\(2\)](#), 3

## 608 Exceptions to section 607

- (1) Section 607 does not apply in a case within subsection (2) or (3).
- (2) A case is within this subsection if the agreement or agreements for sale and repurchase are not what one would expect of persons dealing at arm's length.
- (3) A case is within this subsection if the interim holder has all the benefits and risks from fluctuations in the market value of the securities between their sale and repurchase.
- (4) This section is subject to any regulations under—
  - (a) section 611 (power to modify Chapter 5 in non-arm's length case), and
  - (b) sections 612 to 614 (powers to modify repo provisions: non-standard repo cases and redemption arrangements).

### Modifications etc. (not altering text)

**C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), [2\(2\)](#), 3

### *Additional tax treatment*

## 609 Additional income tax consequences of price differences

- (1) Subsections (2) and (3) apply if an amount is treated under section 607 as a payment of interest.
- (2) If the repurchase price is more than the sale price, the repurchase price is treated for other income tax purposes as reduced by the amount of the payment of interest.
- (3) If the sale price is more than the repurchase price, the repurchase price is treated for other income tax purposes as increased by the amount of the payment of interest.
- (4) “Other income tax purposes” means income tax purposes other than the purposes of—
  - (a) sections 601 to 605 (deemed manufactured payments: repos), and
  - (b) this Chapter.
- (5) The Treasury may by regulations provide for any amount which is treated under section 607 as received as a payment of interest to be treated, in such circumstances and so far as may be described in the regulations, as exempt pension income.

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- (6) “Exempt pension income” means income which is eligible for relief from income tax as a result of section 613(4) or 614(2), (3) or (4) of ICTA or section 186 of FA 2004 (exemptions about pensions and annuities).
- (7) Section 261G of TCGA 1992 deals with the effect on the repurchase price for capital gains tax purposes of an amount being treated under section 607 as a payment of interest.

**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

*Interpretation*

**610 Repurchase price in deemed manufactured payment case**

- (1) This section applies if section 602 (deemed manufactured payments: repos) applies to a case in which section 607 applies.
- (2) References in sections 607 to 609 to the repurchase price are to be read as references to the repurchase price which is applicable as a result of section 604(2), (4) or (5).

**Modifications etc. (not altering text)**

- C3** Ss. 601-610 applied (with modifications) (with effect in accordance with reg. 1(2) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Enactments\) Regulations 2007 \(S.I. 2007/2486\)](#), regs. 1(1), **2(2)**, 3

*Power to modify*

**611 Power to modify Chapter in non-arm's length case**

- (1) The Treasury may by regulations provide for—
- (a) sections 607 to 610 (price differences under repos), or
  - (b) any of those sections,
- to apply with modifications if the exception in section 608(2) (agreement not at arm's length) would otherwise prevent section 607 from applying.
- (2) Regulations under this section may make different provision for different cases.
- (3) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) The incidental, supplemental and consequential provision may include modifications of—
- (a) section 604 (deemed increase in repurchase price: price differences under repos), and
  - (b) section 605 (deemed increase in repurchase price: other income tax purposes).

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- (5) In this section “modifications” includes exceptions and omissions.
- (6) Accordingly, the power in subsection (1) includes power to provide for any of sections 607 to 610 not to apply in relation to the case mentioned in that subsection.

## CHAPTER 6

### POWERS TO MODIFY REPO PROVISIONS

#### 612 Non-standard repo cases

- (1) The Treasury may by regulations provide for—
  - (a) sections 601 to 606 (deemed manufactured payments: repos),
  - (b) sections 607 to 610 (treatment of price differences under repos), or
  - (c) any of those sections,
 to apply with modifications in relation to non-standard repo cases.
- (2) A case is a non-standard repo case if—
  - (a) there is a repo in respect of securities,
  - (b) under the repo, there has been a sale (“the original sale”) of the securities by the original owner to the interim holder, and
  - (c) any of conditions A to E is met in relation to the repo.
- (3) Condition A is that—
  - (a) the obligation to buy back the securities is not performed, or
  - (b) the option to buy them back is not exercised.
- (4) Condition B is that provision is made by or under an agreement for different or additional UK shares, UK securities or overseas securities to be treated as (or as included with) representative securities.
- (5) Condition C is that provision is made by or under an agreement for any UK shares, UK securities or overseas securities to be treated as not included with representative securities.
- (6) Condition D is that provision is made by or under an agreement for the sale price or repurchase price to be decided or varied wholly or partly by reference to post-agreement fluctuations.
- (7) Condition E is that provision is made by or under an agreement for a person to be required, in a case where there are post-agreement fluctuations, to make a payment in the period—
  - (a) beginning immediately after the making of the agreement for the original sale, and
  - (b) ending when the repurchase price becomes due.
- (8) “Post-agreement fluctuations” are fluctuations in the value of —
  - (a) securities transferred in pursuance of the original sale, or
  - (b) representative securities,
 which occur in the period after the making of the agreement for the original sale.



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- (9) “Representative securities” are UK shares, UK securities or overseas securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale.

### **613 Redemption arrangements**

- (1) The Treasury may by regulations provide for—
- (a) sections 601 to 606 (deemed manufactured payments: repos),
  - (b) sections 607 to 610 (treatment of price differences under repos), or
  - (c) any of those sections,
- to apply with modifications in relation to cases involving redemption arrangements.
- (2) A case involves redemption arrangements if—
- (a) arrangements, corresponding to those made in cases where there is a repo, are made by an agreement, or one or more related agreements, in relation to securities that are to be redeemed in the period after their sale,
  - (b) the securities are UK shares, UK securities or overseas securities, and
  - (c) the arrangements are such that the seller or a person connected with the seller (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will result from the redemption.

### **614 Sections 612 and 613: supplementary**

- (1) Regulations under section 612 or 613 may make different provision for different cases.
- (2) Regulations under either section may contain incidental, supplemental, consequential and transitional provision and savings.
- (3) The incidental, supplemental and consequential provision may, in the case of regulations about sections 607 to 610, include modifications of—
- (a) section 604 (deemed increase in repurchase price: price differences under repos), and
  - (b) section 605 (deemed increase in repurchase price: other income tax purposes).
- (4) In this section and sections 612 and 613 “modifications” includes exceptions and omissions.
- (5) Accordingly, a power in sections 612 and 613 to provide for a provision to apply with modifications in relation to a particular case includes power to provide for the provision not to apply in relation to that case.

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## PART 12

### ACCRUED INCOME PROFITS

#### CHAPTER 1

##### INTRODUCTION

#### 615 Overview of Part

- (1) This Part makes provision about—
  - (a) accrued income profits and losses, and
  - (b) exemptions which apply where there is interest on securities.
- (2) In this Part “accrued income profits” means profits which under Chapter 2 are treated as made where securities which carry or have carried interest are transferred.
- (3) See sections 628, 630 and 670(2) and (3) for when such profits are treated as made.
- (4) In this Part “accrued income losses” means losses which under Chapter 2 are treated as made where securities which carry or have carried interest are transferred.
- (5) See section 628 for when such losses are treated as made.
- (6) For the meaning of “securities”, “transfer” and “interest”, see sections 619, 620 and 671 respectively.

#### CHAPTER 2

##### ACCRUED INCOME PROFITS AND LOSSES

##### *Charge to tax*

#### 616 Charge to tax on accrued income profits

Income tax is charged on accrued income profits.

#### 617 Income charged

- (1) Tax is charged under this Chapter on the full amount of the accrued income profits treated as made in the tax year.
- (2) Accrued income profits within section 628(5) (profits treated as made where the settlement day falls within an interest period) are treated as made in the tax year in which the last day of the interest period in which the profits are treated as made falls.
- (3) Accrued income profits within section 630(2) (profits treated as made where the settlement day falls after the end of the securities' last interest period) are treated as made in the tax year in which the settlement day for the transfer falls.

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- (4) Accrued income profits within section 670(2) or (3) (withdrawal of relief for unremittable transfer proceeds) are treated as made in the tax year in which the proceeds cease to be unremittable.
- (5) Section 668(5) (when proceeds are unremittable) applies for the purposes of subsection (4) as it applies for the purposes mentioned in section 668(5).
- (6) For the meaning of “interest period” and “the settlement day”, see sections 673 and 674 respectively.

## **618 Person liable**

- (1) The person liable for any tax charged under this Chapter is the person treated as making the accrued income profits.
- (2) But see section 666 (under which nominees and trustees may be disregarded).

*Securities to which Chapter applies*

## **619 Meaning of “securities” and when securities are of the same kind**

- (1) In this Chapter “securities” includes—
  - (a) any loan stock or similar security other than an excluded security, and
  - (b) shares in a building society which are qualifying shares for the purposes of section 117(4) of TCGA 1992 (qualifying corporate bonds),but (subject to paragraph (b)) it does not include any shares in a company.
- (2) For the purposes of subsection (1)(a), it does not matter—
  - (a) whether the security is of the government of the United Kingdom, any other government, any public or local authority in the United Kingdom or elsewhere, or any company or other body,
  - (b) whether or not the security is secured,
  - (c) whether or not the security carries a right to interest of a fixed amount or at a fixed rate percentage of the nominal value of the security, or
  - (d) whether or not the security is in bearer form.
- (3) In this section “excluded securities” means—
  - (a) national savings certificates (including Ulster Savings Certificates as defined in section 693(7) of ITTOIA 2005),
  - (b) war savings certificates,
  - (c) uncertificated eligible debt security units as defined in section 986,
  - (d) certificates of deposit (see section 1019),
  - (e) a security which is a right falling within section 552(1)(c) of ITTOIA 2005 at the time of the transfer in question,
  - (f) a security that meets the redemption conditions (see subsection (5)), and
  - (g) a security that is a deeply discounted security within the meaning of Chapter 8 of Part 4 of ITTOIA 2005.
- (4) But subsection (3)(g) does not include a security if, on its transfer, Chapter 8 of Part 4 of ITTOIA 2005 would apply subject to the rules in sections 454 to 456 of that Act (listed securities held since 26 March 2003).

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- (5) The redemption conditions are that—
  - (a) the security is redeemable,
  - (b) the amount payable on its redemption exceeds its issue price, and
  - (c) no return other than the amount of that excess is payable on it.
- (6) Securities are treated as being of the same kind for the purposes of this Chapter if they—
  - (a) are treated as being of the same kind by the practice of a recognised stock exchange, or
  - (b) would be so treated if dealt in on such an exchange.

### *Transfers to which Chapter applies*

## **620 Transactions which are transfers: general**

- (1) References in this Chapter to the transfer of securities are—
  - (a) to the transfer of securities by way of sale, exchange, gift or otherwise,
  - (b) to the conversion of securities in any case where there is no transfer of the securities within paragraph (a),
  - [<sup>F114</sup>(c) to the redemption of variable rate securities in any case where there has been a transfer of the securities at any time before redemption, or]
  - (d) to a transaction or event treated as a transfer under—
    - (i) section 648(1) or (3) (strips of gilt-edged securities),
    - (ii) section 649(4) (new securities issued with extra return),
    - (iii) section 650(2), (4) or (6) (trading stock appropriations etc),
    - (iv) section 651(2) (owner becoming entitled to securities as trustee), or
    - (v) section 652(2) (securities ceasing to be held on charitable trusts).
- (2) But subsection (1)(a) does not include—
  - (a) the vesting of securities in personal representatives on death, or
  - (b) the transfer of a security to which Chapter 8 of Part 4 of ITTOIA 2005 applies subject to the rules in sections 454 to 456 of that Act.
- (3) For the purposes of this Chapter—
  - (a) a transfer of securities under an agreement takes place when the agreement is made, and
  - (b) the person to whom they are to be transferred under the agreement becomes entitled to them at that time.
- (4) But in the case of a conversion of securities within subsection (1)(b), the transfer takes place on the day of the conversion.
- (5) And in the case of a redemption of securities within subsection (1)(c), the transfer takes place on the day of the redemption.
- (6) Subsection (1) is subject to—
  - section 648(7) (transactions forming part of exchanges concerning strips of gilt-edged securities),
  - section 653 (stock lending), and
  - section 655 (transfers under sale and repurchase arrangements).

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- (7) In this Chapter “conversion”, in relation to securities, has the meaning given by section 132 of TCGA 1992.

#### Textual Amendments

**F114** S. 620(1)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.2\) Order 2007 \(S.I. 2007/1820\)](#), arts. 1(1), **4(2)**

### 621 Transferors and transferees

- (1) In this Chapter “transferor” and “transferee” are to be read in accordance with section 620 (but this is subject to subsections (2) to (4)).
- (2) In the case of a conversion of securities within section 620(1)(b)—
- (a) the person who was entitled to the securities immediately before the conversion is treated as the transferor, but
  - (b) no one is treated as the transferee.
- (3) In the case of a redemption of securities within section 620(1)(c)—
- (a) the person who was entitled to the securities immediately before the redemption is treated as the transferor, but
  - (b) no one is treated as the transferee.
- (4) The following provisions also contain rules about who is the transferor or the transferee for certain transfers—
- section 648(1) to (4) (strips of gilt-edged securities),
  - section 649(4) and (5) (new securities issued with extra return),
  - section 650 (trading stock appropriations etc),
  - section 651(2) and (3) (owner becoming entitled to securities as trustee),
  - section 652(2) and (3) (securities ceasing to be held on charitable trusts), and
  - section 666 (certain transfers by or to nominees or trustees treated as made by or to others).
- (5) See also sections 638 to 647 (excluded transferors and transferees).

### 622 Application of Chapter to different kinds of transfer

- (1) Different rules apply under this Chapter for the different kinds of transfer specified in subsection (2).
- (2) The transfers are—
- (a) transfers with accrued interest (see section 623),
  - (b) transfers without accrued interest (see section 624),
  - (c) transfers with unrealised interest (see section 625), and
  - (d) transfers of variable rate securities (see section 626).
- (3) If a transfer is both a transfer with unrealised interest and a transfer of a kind specified in subsection (2)(a), (b) or (d), both the provisions of this Chapter applicable to transfers with unrealised interest and the provisions applicable to the other kind of transfer apply to the transfer.

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## **623 Transfers with accrued interest**

- (1) The general rule is that securities are transferred with accrued interest for the purposes of this Chapter if they are transferred with the right to receive interest payable—
  - (a) in a case where the settlement day is an interest payment day, on the settlement day, and
  - (b) in any other case, on the first interest payment day after the settlement day.
- (2) But, in the case of the transfers specified in subsection (3), subsection (4) applies instead of subsection (1).
- (3) The transfers are those treated as made under—
  - (a) section 620(1)(b) (conversion),
  - (b) section 650 (trading stock appropriations etc),
  - (c) section 651 (owner becoming entitled to securities as trustee), and
  - (d) section 652 (securities ceasing to be held on charitable trusts).
- (4) If the person treated as the transferor had the right to receive interest payable as mentioned in subsection (1)(a) or (b), the securities are treated as transferred with accrued interest.
- (5) This section is subject to section 626 (transfers of variable rate securities).
- (6) See also—
  - section 648(6) (certain exchanges of strips treated as transfers with accrued interest), and
  - section 649(4) (issue of new securities with extra return treated as transfer with accrued interest).

## **624 Transfers without accrued interest**

- (1) The general rule is that securities are transferred without accrued interest for the purposes of this Chapter if they are transferred without the right to receive interest payable as mentioned in section 623(1)(a) or (b).
- (2) But, in the case of the transfers specified in subsection (3), subsection (4) applies instead of subsection (1).
- (3) The transfers are those treated as made under—
  - (a) section 620(1)(b) (conversion),
  - (b) section 650 (trading stock appropriations etc),
  - (c) section 651 (owner becoming entitled to securities as trustee), and
  - (d) section 652 (securities ceasing to be held on charitable trusts).
- (4) If the person treated as the transferor did not have the right to receive interest payable as mentioned in section 623(1)(a) or (b), the securities are treated as transferred without accrued interest.
- (5) This section is subject to section 626 (transfers of variable rate securities).
- (6) See also section 648(5) (certain exchanges of strips treated as transfers without accrued interest).

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## **625 Transfers with unrealised interest**

- (1) For the purposes of this Chapter securities are transferred with unrealised interest if they are transferred with the right to receive interest payable on an interest payment day falling before the settlement day.
- (2) Such interest is referred to in this Chapter as “unrealised interest”.

## **626 Transfers of variable rate securities**

- (1) Sections 623 and 624 do not apply to transfers of variable rate securities.
- (2) Such transfers are not treated as transfers with accrued interest or transfers without accrued interest.

## **627 Meaning of “variable rate securities”**

- (1) For the purposes of this Chapter securities are “variable rate securities” unless their terms of issue provide that throughout the period from issue to redemption (whenever redemption might occur) they are to carry interest at a rate which falls into one, and one only, of the categories specified in subsection (2).
- (2) The categories are—
  - (a) a fixed rate which is the same throughout the period,
  - (b) a rate which bears the same fixed relationship to a standard published base rate throughout the period, and
  - (c) a rate which bears the same fixed relationship to a published index of prices throughout the period.
- (3) In subsection (2) “published index of prices” means the retail prices index or any similar general index of prices which is published by the government of any territory outside the United Kingdom or by an agent of such a government.
- (4) In determining whether new securities (within the meaning of section 649 (new securities issued with extra return)) are variable rate securities, the interest payable on them on the first interest payment day after their issue is treated as payable in respect of the period beginning with the relevant period and ending with that day.
- (5) In subsection (4) “the relevant period” has the meaning given by section 649(8).

### *Calculating accrued income profits and losses*

## **628 Making accrued income profits and losses: general rule**

- (1) This section sets out the general rule for determining whether a person is treated as making accrued income profits or accrued income losses where securities are transferred by or to the person.
- (2) This section does not apply in a case where section 630 applies.
- (3) A separate calculation is to be made for each kind of security that is transferred by or to the person and for each interest period of each such kind of security.
- (4) Each such calculation is to find—

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- (a) the total amount (“A”) of the payments treated under this Chapter as made to the person in the interest period in question in respect of transfers of securities of the particular kind, and
  - (b) the total amount (“B”) of the payments treated under this Chapter as made by the person in that period in respect of such transfers.
- (5) A person is treated as making accrued income profits in an interest period as a result of transfers of securities of a particular kind if A exceeds B.
- (6) A person is treated as making accrued income losses in an interest period as a result of transfers of securities of a particular kind if B exceeds A.
- (7) For the payments that are treated as made on transfers of different kinds, see—  
 section 632 (payment on transfer with accrued interest),  
 section 633 (payment on transfer without accrued interest),  
 section 634 (payment on transfer with unrealised interest),  
 section 635 (payment on transfer of variable rate securities), and  
 section 637(2) (accrued income losses treated as payment on transfer in next interest period).
- (8) See also—  
 section 638(2) (no account to be taken of any payment treated as made by or to excluded transferor or transferee), and  
 Chapter 3 (exemptions relating to interest on securities).

## **629 Calculating accrued income profits and losses where section 628 applies**

- (1) If section 628(5) applies, the amount of the accrued income profits treated as made is equal to the excess mentioned in section 628(5).
- (2) If section 628(6) applies, the amount of the accrued income losses treated as made is equal to the excess mentioned in section 628(6).

## **630 Making accrued income profits: settlement day outside interest period**

- (1) This section applies if—
  - (a) there is a transfer of securities with unrealised interest or a transfer of variable rate securities, and
  - (b) the settlement day for the transfer falls after the end of the only or last interest period of the securities.
- (2) The transferor is treated as making accrued income profits.
- (3) See also—  
 section 638(3) (no account to be taken of transfer if transferor is excluded transferor), and  
 section 681 (exemption for unrealised interest received by transferee after transfer).



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### **631 Amount of accrued income profits where section 630 applies**

- (1) In the case of a transfer of securities with unrealised interest to which section 630 applies, the amount of the accrued income profits treated as made is equal to the unrealised interest.
- (2) Subsection (1) is subject to section 660 (transfers with unrealised interest: interest in default).
- (3) In the case of a transfer of variable rate securities to which section 630 applies, the amount of the accrued income profits treated as made is such amount as is just and reasonable.

*The payments treated as made on transfers*

### **632 Payment on transfer with accrued interest**

- (1) In the case of a transfer of securities with accrued interest, for the purposes of this Chapter a payment is treated as made by the transferee to the transferor in the interest period in which the settlement day falls.
- (2) The amount of that payment depends on whether the transfer is under an arrangement by which the transferee accounts to the transferor separately—
  - (a) for the consideration for the securities, and
  - (b) for gross interest accruing to the settlement day.
- (3) If the transfer is under such an arrangement, the amount of the payment is the amount of gross interest which the transferee accounts for.
- (4) If—
  - (a) the transfer is not under such an arrangement, and
  - (b) the settlement day is itself an interest payment day for the securities,the amount of the payment is the amount of interest payable on the securities on that day.
- (5) If—
  - (a) the transfer is not under such an arrangement, and
  - (b) the settlement day is not an interest payment day for the securities,the amount of the payment is an amount equal to—

$$I \times \frac{A}{B}$$

where—

I is the interest payable on the securities on the first interest payment day after the settlement day (“the payment day”),

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A is the number of days in the period beginning with the first day on which that interest accrues and ending with the settlement day, and

B is the number of days in the period beginning with the first day on which that interest accrues and ending with the payment day.

- (6) For the purposes of subsection (5), the first day on which that interest accrues is taken to be—
  - (a) the day after the last interest payment day before the settlement day, or
  - (b) if there was no interest payment day before the settlement day, the first day of the first interest period of the securities.
- (7) In a case where no one is treated as the transferor (see sections 648(4) and 649(5)), this section has effect as if—
  - (a) in subsection (1) the words “to the transferor” were omitted, and
  - (b) subsections (2), (3), (4)(a) and (5)(a) were omitted.
- (8) In a case where no one is treated as the transferee (see sections 621(2) and (3) and 648(2)), this section has effect as if—
  - (a) in subsection (1) the words “by the transferee” were omitted, and
  - (b) subsections (2), (3), (4)(a) and (5)(a) were omitted.
- (9) Subsections (2) to (5) are subject to section 662 (new securities issued with extra return: special rules about payments).
- (10) Subsections (4) and (5) are subject to section 659 (transfers with or without accrued interest: interest in default).

### **633 Payment on transfer without accrued interest**

- (1) In the case of a transfer of securities without accrued interest, for the purposes of this Chapter a payment is treated as made by the transferor to the transferee in the interest period in which the settlement day falls.
- (2) The amount of that payment depends on whether the transfer is under an arrangement by which the transferor accounts to the transferee for gross interest accruing from the settlement day to the next interest payment day.
- (3) If the transfer is under such an arrangement, the amount of the payment is the amount of gross interest which the transferor accounts for.
- (4) If—
  - (a) the transfer is not under such an arrangement, and
  - (b) the settlement day is itself an interest payment day for the securities,
 the amount of the payment is nil.
- (5) If—
  - (a) the transfer is not under such an arrangement, and
  - (b) the settlement day is not an interest payment day for the securities,
 the amount of the payment is an amount equal to—

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$$I \times \frac{A}{B}$$

where—

I is the interest payable on the securities on the first interest payment day after the settlement day (“the payment day”),

A is the number of days in the period beginning with the day after the settlement day and ending with the payment day, and

B is the number of days in the period beginning with the first day on which that interest accrues and ending with the payment day.

- (6) For the purposes of subsection (5), the first day on which that interest accrues is taken to be—
  - (a) the day after the last interest payment day before the settlement day, or
  - (b) if there is no interest payment day before the settlement day, the first day of the first interest period of the securities.
- (7) In a case where no one is treated as the transferor (see section 648(4)), this section has effect as if—
  - (a) in subsection (1) the words “by the transferor” were omitted, and
  - (b) subsections (2), (3), (4)(a) and (5)(a) were omitted.
- (8) In a case where no one is treated as the transferee (see sections 621(2) and (3) and 648(2)), this section has effect as if—
  - (a) in subsection (1) the words “to the transferee” were omitted, and
  - (b) subsections (2), (3), (4)(a) and (5)(a) were omitted.
- (9) Subsection (5) is subject to section 659 (transfers with or without accrued interest: interest in default).
- (10) See also section 663(2) (reduction of amount of payment under this section where transfer to maker of manufactured payments).

#### **634 Payment on transfer with unrealised interest**

- (1) In the case of a transfer of securities with unrealised interest where the settlement day falls within an interest period, for the purposes of this Chapter a payment is treated as made to the transferor in that period.
- (2) The amount of the payment is equal to the unrealised interest.
- (3) Subsection (2) is subject to section 660 (transfers with unrealised interest: interest in default).
- (4) No one is treated as making the payment.
- (5) Accordingly, the payment is not brought into account in determining whether the transferee is treated as making accrued income profits or losses under section 628.

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- (6) But see section 681 (exemption for unrealised interest received by transferee after transfer).
- (7) See section 630 for the rules that apply to transfers of securities with unrealised interest where the settlement day falls outside an interest period.

### **635 Payment on transfer of variable rate securities**

- (1) In the case of a transfer of variable rate securities where the settlement day falls within an interest period, for the purposes of this Chapter a payment is treated as made to the transferor in that period.
- (2) The amount of the payment is such amount as is just and reasonable.
- (3) No one is treated as making the payment.
- (4) Accordingly, the payment is not brought into account in determining whether the transferee is treated as making accrued income profits or losses under section 628.
- (5) See section 630 for the rules that apply to transfers of variable rate securities where the settlement day falls outside an interest period.

*Exception where there is a transfer to a legatee*

### **636 Exception where there is a transfer to a legatee**

- (1) This section applies if—
  - (a) an individual who is entitled to securities dies, and
  - (b) the securities are transferred by the personal representatives to a legatee.
- (2) If the securities are transferred in the interest period in which the death occurs, no payment is treated as made under this Chapter as a result of the transfer.
- (3) If the securities are variable rate securities and the deceased dies after the end of the only or last interest period of the securities, no accrued income profits are treated as made under section 630(2).
- (4) In this section “legatee” includes any person taking (whether beneficially or as trustee) —
  - (a) under a testamentary disposition, or
  - (b) on an intestacy or partial intestacy.
- (5) Such a person includes a person taking as a result of an appropriation by personal representatives in or towards the satisfaction of a legacy or other interest or share in the deceased's property.

*Relief for losses*

### **637 Accrued income losses treated as payments in next interest period**

- (1) This section applies if—
  - (a) a person is treated as making accrued income losses in an interest period as a result of transfers of securities, and

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- (b) the period does not end with an interest payment day.
- (2) For the purposes of this Chapter the person is treated as making a payment on a transfer of the securities in the next interest period equal to the amount of the losses.
- (3) For cases where the period does end with an interest payment day, see sections 678 to 680 (exemptions for interest on securities involving accrued income losses).

#### *Excluded transferors and transferees*

### **638 Excluded persons: disregard of certain payments and transfers**

- (1) This section applies if there is a transfer of securities in relation to which a person (“P”) is an excluded transferor or excluded transferee.
- (2) In determining whether P has made accrued income profits or accrued income losses under section 628 (making accrued income profits and losses: general rule) and the amount of any such profits or losses, no account is to be taken of any payment treated as made by or to P on the transfer.
- (3) In determining whether P has made accrued income profits under section 630 (making accrued income profits: settlement day outside interest period) and the amount of any such profits, no account is to be taken of the transfer if P is an excluded transferor in relation to it.
- (4) For the cases where a person is an excluded transferor or excluded transferee in relation to a transfer, see—
  - section 639 (small holdings: individuals),
  - section 640 (small holdings: personal representatives),
  - section 641 (small holdings: trustees of a disabled person's trusts),
  - section 642 (traders),
  - section 643 (non-residents),
  - section 644 (individuals to whom the remittance basis applies),
  - section 645 (charitable trusts etc),
  - section 646 (pension scheme trustees), and
  - section 647 (makers of manufactured payments).
- (5) Whether a person is an excluded transferee is also relevant to the application of section 681 (exemption for unrealised interest received by transferee after transfer).

### **639 Small holdings: individuals**

- (1) In relation to a transfer with accrued interest or transfer without accrued interest, an individual is an excluded transferor or excluded transferee unless the nominal value of securities held by the individual exceeds £5,000 on any day—
  - (a) in the tax year in which the interest period ends, or
  - (b) in the previous tax year.
- (2) In relation to a transfer with unrealised interest, an individual is an excluded transferor or excluded transferee unless the nominal value of securities held by the individual exceeds £5,000 on any day—
  - (a) in the tax year in which the settlement day falls, or

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- (b) in the previous tax year.
- (3) In relation to a transfer of variable rate securities, an individual is an excluded transferor unless the nominal value of securities held by the individual exceeds £5,000 on any day in the relevant tax year or the previous tax year.
- (4) In subsection (3) “the relevant tax year” means—
  - (a) if the settlement day falls in an interest period, the tax year in which the interest period ends, or
  - (b) otherwise, the tax year in which the settlement day falls.
- (5) For the purposes of this section, if—
  - (a) an individual holds securities at a particular time, and
  - (b) any interest on them which became payable at that time would be treated for income tax purposes as part of another individual's income,
 each of those individuals is treated as holding at that time the securities which the other holds, as well as those which that individual actually holds.

#### **640 Small holdings: personal representatives**

- (1) In relation to a transfer with accrued interest or transfer without accrued interest of securities that form part of a deceased person's estate, the deceased's personal representatives are an excluded transferor or excluded transferee unless the nominal value of securities held by the deceased's personal representatives as such exceeds £5,000 on any day—
  - (a) in the tax year in which the interest period ends, or
  - (b) in the previous tax year.
- (2) In relation to a transfer with unrealised interest of securities that form part of a deceased person's estate, the deceased's personal representatives are an excluded transferor or excluded transferee unless the nominal value of securities held by the deceased's personal representatives as such exceeds £5,000 on any day—
  - (a) in the tax year in which the settlement day falls, or
  - (b) in the previous tax year.
- (3) In relation to a transfer of variable rate securities that form part of a deceased person's estate, the deceased's personal representatives are an excluded transferor unless the nominal value of securities held by the deceased's personal representatives as such exceeds £5,000 on any day in the relevant tax year or the previous tax year.
- (4) In subsection (3) “the relevant tax year” has the meaning given by section 639(4).

#### **641 Small holdings: trustees of a disabled person's trusts**

- (1) In relation to a transfer with accrued interest or transfer without accrued interest of securities held on a disabled person's trusts, the trustees of the settlement are an excluded transferor or excluded transferee unless the nominal value of securities held by the trustees of the settlement as such exceeds £5,000 on any day—
  - (a) in the tax year in which the interest period ends, or
  - (b) in the previous tax year.
- (2) In relation to a transfer with unrealised interest of securities held on a disabled person's trusts, the trustees of the settlement are an excluded transferor or excluded transferee

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unless the nominal value of securities held by the trustees of the settlement as such exceeds £5,000 on any day—

- (a) in the tax year in which the settlement day falls, or
- (b) in the previous tax year.

(3) In relation to a transfer of variable rate securities held on a disabled person's trusts, the trustees of the settlement are an excluded transferor unless the nominal value of securities held by the trustees of the settlement as such exceeds £5,000 on any day in the relevant tax year or the previous tax year.

(4) In this section—

“disabled person's trusts” means trusts falling within paragraph 1(1) of Schedule 1 to TCGA 1992 (application of annual exempt amount), and

“the relevant tax year” has the meaning given by section 639(4).

## **642 Traders**

(1) In relation to a transfer of securities by a person carrying on a trade, the person is an excluded transferor if the transfer is taken into account for income tax purposes in calculating the profits or losses of the trade.

(2) In relation to a transfer of securities at any time to a person carrying on a trade, the person is an excluded transferee if, had the transfer been made by the person at that time, it would have been taken into account for income tax purposes in calculating the profits or losses of the trade.

## **643 Non-residents**

(1) A person is—

- (a) an excluded transferor in relation to a transfer by the person, and
- (b) an excluded transferee in relation to a transfer to the person,

if the person is non-UK resident throughout the tax year in which the transfer occurs and is not ordinarily UK resident during that year.

(2) In the case of a person who is carrying on a trade in the United Kingdom through a branch or agency during any part of that year (“a UK branch trader”), subsection (1) is subject to subsections (3) and (4).

(3) A UK branch trader is not an excluded transferor under subsection (1) if the securities transferred were situated in the United Kingdom and used or held for the purposes of the branch or agency at or before the time of the transfer.

(4) A UK branch trader is not an excluded transferee under subsection (1) if the securities transferred were situated in the United Kingdom at the time of the transfer and were acquired for use by or for the purposes of the branch or agency.

(5) In this section “branch or agency” has the meaning given by section 10(6) of TCGA 1992.

(6) The place where securities are situated is determined for the purposes of this section in accordance with sections 275(1) and (2)(b) and 275C of TCGA 1992.

(7) Further provision about trustees who are non-UK resident is made in section 667 (trustees' accrued income profits treated as settlement income).

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#### **644 Individuals to whom the remittance basis applies**

- (1) This section applies if—
  - (a) there is a transfer of securities by or to an individual in a tax year, and
  - (b) interest on the securities in respect of which the individual is liable to income tax for the tax year—
    - (i) is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis), or
    - (ii) would be so charged if there were any.
- (2) The individual is an excluded transferor in relation to the transfer if it is made by the individual.
- (3) The individual is an excluded transferee in relation to the transfer if it is made to the individual.

#### **645 Charitable trusts etc**

- (1) A person is—
  - (a) an excluded transferor in relation to a transfer of securities by the person, and
  - (b) an excluded transferee in relation to a transfer of securities to the person,
 if condition A or B is met.
- (2) Condition A is that if the person—
  - (a) became entitled to any interest on the securities, and
  - (b) applied it for charitable purposes only,
 exemption could be granted in respect of the interest under section 532 (exemption for certain savings and investment income that belongs to a charitable trust and is applicable and applied to charitable purposes only).
- (3) Condition B is that if the person—
  - (a) became entitled to any interest on the securities, and
  - (b) applied it for the purposes mentioned in section 533 (exemption for public revenue dividends that are applied only for the repair of college or church buildings etc),
 exemption could be granted in respect of the interest under that section.
- (4) For the transfer treated as occurring where charitable trusts over securities cease, see section 652 (securities ceasing to be held on charitable trusts).

#### **646 Pension scheme trustees**

- A person is—
- (a) an excluded transferor in relation to a transfer of securities by the person, and
  - (b) an excluded transferee in relation to a transfer of securities to the person,
- if, were the person to become entitled to interest on the securities, exemption in respect of it would be allowable under section 186 of FA 2004 (exemption for income from investments held for the purposes of a registered pension scheme).



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## **647 Makers of manufactured payments**

- (1) This section applies if the manufactured payments conditions are met.
- (2) The manufactured payments conditions are that—
  - (a) securities are transferred without accrued interest to a person (“the seller”),
  - (b) the seller makes a contract for the sale of securities of that kind (“the seller’s contract”), and
  - (c) any contract under which the securities are transferred to the seller, or the seller’s contract itself, is a manufactured payments contract.
- (3) The seller is an excluded transferee in relation to the transfer to the seller if the nominal value of the securities subject to the seller’s contract equals or exceeds that of the securities transferred to the seller.
- (4) The seller is an excluded transferor in relation to the transfer of securities under the seller’s contract.
- (5) See section 663 (transfers without accrued interest to makers of manufactured payments) for cases where that nominal value is less than that of the securities transferred to the seller.
- (6) In this section “manufactured payments contract” means a contract under which the seller is required to pay another person manufactured interest or a manufactured overseas dividend as mentioned in section 578 or 581.

*Further transactions treated as transfers*

## **648 Strips of gilt-edged securities**

- (1) The exchange of a gilt-edged security for strips of that security is treated for the purposes of this Chapter as a transfer of the security by the person who exchanges the security.
- (2) But no one is treated as the transferee.
- (3) The exchange of strips of a gilt-edged security for a single gilt-edged security consolidating those strips is treated for the purposes of this Chapter as a transfer of the single security to the person who exchanges those strips.
- (4) But no one is treated as the transferor.
- (5) An exchange within subsection (1) or (3) is treated as a transfer without accrued interest if it is made at any time after the balance has been struck for a dividend on the security but before the day on which that dividend is payable.
- (6) In any other case, such an exchange is treated as a transfer with accrued interest.
- (7) If an exchange is treated as a transfer under subsection (1) or (3), any transaction forming part of the exchange is not itself a transfer for the purposes of this Chapter.
- (8) In this section “strip” has the meaning given by section 444 of ITTOIA 2005.
- (9) For the meaning of “gilt-edged security”, see section 1024.

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## **649 New securities issued with extra return**

- (1) This section applies if—
  - (a) securities (“old securities”) of a particular kind are issued by way of an original issue of securities of that kind,
  - (b) on a later occasion securities (“new securities”) of the same kind are issued,
  - (c) a sum (“the extra return”) is payable in respect of the new securities by the issuer of them to reflect the fact that interest is accruing on the old securities,
  - (d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and
  - (e) the extra return is equal to the amount of interest mentioned in subsection (2).
- (2) The amount of interest referred to in subsection (1)(e) is—
  - (a) the amount of interest payable for the relevant period on so many old securities as there are new, or
  - (b) if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new.
- (3) This section does not apply if the new securities are variable rate securities.
- (4) The new securities are treated as transferred with accrued interest to the person to whom they are issued on the new issue day.
- (5) But no one is treated as the transferor.
- (6) For the purposes of this Chapter, the settlement day for the transfer is taken to be the new issue day.
- (7) See section 662 for the amount of the payment treated as made in the case of the transfer.
- (8) In this section—
 

“the relevant period” is the period beginning with the day after—

  - (a) the only or last interest payment day before the new issue day, or
  - (b) if there is no interest payment day before the new issue day, the day on which the old securities are issued,

and ending with the new issue day, and

“the new issue day” is the day on which the new securities are issued.

## **650 Trading stock appropriations etc**

- (1) Subsection (2) applies if a person—
  - (a) acquires securities otherwise than as trading stock of a trade the person carries on, and
  - (b) appropriates the securities as trading stock for the purposes of such a trade (whether on the start of the trade or otherwise).
- (2) The person is treated for the purposes of this Chapter as transferring the securities otherwise than in the course of the trade, and re-acquiring them in the course of the trade, on the day of appropriation.
- (3) Subsection (4) applies if securities—
  - (a) form part of the trading stock of a person's trade, and

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- (b) are appropriated by the person for any other purpose.
- (4) The person is treated for the purposes of this Chapter as transferring the securities in the course of the trade, and re-acquiring them otherwise than in the course of the trade, on the day of appropriation.
- (5) Subsection (6) applies if securities—
  - (a) form part of the trading stock of a person's trade, and
  - (b) are retained by the person on ceasing to carry on the trade.
- (6) The person is treated for the purposes of this Chapter as transferring the securities in the course of the trade, and re-acquiring them otherwise than in the course of the trade, on the day of cessation.
- (7) See sections 623(2) to (4) and 624(2) to (4) for cases where securities are treated as transferred with or without accrued interest where this section applies.

#### **651 Owner becoming entitled to securities as trustee**

- (1) This section applies if a person entitled to securities otherwise than as trustee becomes trustee of them.
- (2) The person is treated for the purposes of this Chapter as transferring the securities at the time the person becomes trustee of them.
- (3) The transfer is treated as being made—
  - (a) by the person in a capacity other than trustee, and
  - (b) to the person and, if there are any other trustees, to the others in the capacity of trustees.
- (4) See sections 623(2) to (4) and 624(2) to (4) for cases where securities are treated as transferred with or without accrued interest where this section applies.

#### **652 Securities ceasing to be held on charitable trusts**

- (1) This section applies if securities held on charitable trusts cease to be subject to those trusts.
- (2) The trustees are treated for the purposes of this Chapter as transferring the securities at the time when the securities cease to be so subject.
- (3) The transfer is treated as being made by the trustees in their capacity as charitable trustees to themselves in another capacity.
- (4) See sections 623(2) to (4) and 624(2) to (4) for cases where securities are treated as transferred with or without accrued interest where this section applies.

#### *Excluded transfers*

#### **653 Stock lending**

This Chapter does not apply to transfers of securities in circumstances such that any disposal and acquisition are disregarded for the purposes of capital gains tax as a

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result of section 263B(2) of TCGA 1992 (capital gains tax exemption for disposals in pursuance of stock lending arrangements).

## **654 Sale and repurchase arrangements**

- (1) This section applies for the purposes of sections 655 to 658.
- (2) There is a sale and repurchase arrangement in respect of securities if the securities are transferred under an agreement to sell them and—
  - (a) the transferor (“T”) or a person connected with T is required to buy back the securities by the agreement or a related agreement,
  - (b) T or a person connected with T is required to buy back the securities as a result of the exercise of an option acquired under the agreement or a related agreement, or
  - (c) T or a person connected with T exercises an option to buy back the securities which was acquired under the agreement or a related agreement.
- (3) Agreements are related for the purposes of this section if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).
- (4) References in this section to buying back securities include—
  - (a) buying similar securities, and
  - (b) in the case of a person connected with T, buying the securities sold by T or similar securities.
- (5) Subsection (4) applies even if the person buying the securities has not held them before.
- (6) References in sections 656 and 657 to repurchase are to be read accordingly.
- (7) Securities are similar for the purposes of subsection (4) if they give their holders—
  - (a) the same rights against the same persons as to capital and interest, and
  - (b) the same remedies to enforce those rights.
- (8) Subsection (7) applies even if there is a difference in—
  - (a) the total nominal amounts of the securities,
  - (b) the form in which they are held, or
  - (c) the manner in which they can be transferred.

## **655 Transfers under sale and repurchase arrangements**

- (1) If there is a sale and repurchase arrangement in respect of securities, this Chapter does not apply to the transfer by T or the transfer back under the arrangement.
- (2) But subsection (1) does not apply if section 608 prevents section 607 (treatment of price differences under repos) from applying in relation to the arrangement.

## **656 Power to modify: non-standard sale and repurchase arrangements**

- (1) The Treasury may by regulations provide for section 655 to apply with modifications in relation to cases involving non-standard sale and repurchase arrangements.
- (2) A case involves a non-standard sale and repurchase arrangement if—

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- (a) there is a sale and repurchase arrangement in respect of securities,
  - (b) T makes a sale of the securities under the agreement to sell them (“the original sale”),
  - (c) the securities are UK shares, UK securities or overseas securities, and
  - (d) any of conditions A to E is met in relation to the sale and repurchase arrangement.
- (3) Condition A is that—
  - (a) the obligation to buy back the securities is not performed, or
  - (b) the option to buy them back is not exercised.
- (4) Condition B is that provision is made by or under an agreement for different or additional UK shares, UK securities or overseas securities to be treated as (or as included with) representative securities.
- (5) Condition C is that provision is made by or under an agreement for any UK shares, UK securities or overseas securities to be treated as not included with representative securities.
- (6) Condition D is that provision is made by or under an agreement for the sale price or repurchase price to be decided or varied wholly or partly by reference to post-agreement fluctuations.
- (7) Condition E is that provision is made by or under an agreement for a person to be required, in a case where there are post-agreement fluctuations, to make a payment in the period—
  - (a) beginning immediately after the making of the agreement for the original sale, and
  - (b) ending when the repurchase price becomes due.
- (8) “Post-agreement fluctuations” are fluctuations in the value of —
  - (a) securities transferred in pursuance of the original sale, or
  - (b) representative securities,which occur in the period after the making of the agreement for the original sale.
- (9) “Representative securities” are UK shares, UK securities or overseas securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale.

## **657 Power to modify: redemption arrangements**

- (1) The Treasury may by regulations provide for section 655 to apply with modifications in relation to cases involving redemption arrangements.
- (2) A case involves redemption arrangements if—
  - (a) arrangements, corresponding to those made in cases where there is a sale and repurchase arrangement in respect of securities, are made by an agreement, or one or more related agreements, in relation to securities that are to be redeemed in the period after their sale,
  - (b) the securities are UK shares, UK securities or overseas securities, and
  - (c) the arrangements are such that the seller or a person connected with the seller (instead of being required to repurchase the securities or acquiring an option

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to do so) is granted rights in respect of the benefits that will result from the redemption.

## **658 Powers to modify: supplementary**

- (1) Regulations under section 656 or 657 may make different provision for different cases.
- (2) Regulations under either section may contain incidental, supplemental, consequential and transitional provision and savings.
- (3) In this section and sections 656 and 657 “modifications” includes exceptions and omissions.
- (4) Accordingly, a power in sections 656 and 657 to provide for a provision to apply with modifications in relation to a particular case includes power to provide for the provision not to apply in relation to that case.
- (5) In sections 656 and 657 “UK shares”, “UK securities” and “overseas securities” have the same meaning as in Part 11 (see sections 566 and 567).

### *Special rules about some calculations*

## **659 Transfers with or without accrued interest: interest in default**

- (1) This section applies if—
  - (a) the amount of the payments treated as made on a transfer of securities is to be determined under section 632(4) or (5), 633(5) or 662(4) (cases where interest is not accounted for separately),
  - (b) there has been a failure to pay interest due on the securities, and
  - (c) as a result of the failure, on the interest payment day which is or follows the settlement day the value of the right to receive the interest payable on the securities is less than the interest payable.
- (2) The calculation under section 632(4) or (5), 633(5) or 662(4) is to be made by reference to that value instead of the interest.

## **660 Transfers with unrealised interest: interest in default**

- (1) This section applies if—
  - (a) securities are transferred with unrealised interest,
  - (b) there has been a failure to pay interest due on the securities transferred, and
  - (c) as a result of the failure, on the day of the transfer the value of the right to receive the unrealised interest (“the unrealised interest value”) is less than the unrealised interest.
- (2) The amount of the payment treated as made to the transferor under section 634(2) is taken to be the unrealised interest value instead of the amount of the unrealised interest.
- (3) The amount of accrued income profits under section 631(1) is taken to be the unrealised interest value instead of the amount of the unrealised interest.
- (4) Subsections (2) and (3) are subject to section 661 (successive transfers with unrealised interest in default).

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- (5) For the purposes of this section and section 661, a person is treated as transferring securities of a particular kind which the person acquired later before securities of that kind acquired earlier.
- (6) See also section 681 (exemption for unrealised interest received by transferee after transfer).

#### **661 Successive transfers with unrealised interest in default**

- (1) The amount taken as the unrealised interest value for the purposes of section 660(2) or (3) is reduced if the person (“T”) who makes the transfer referred to in section 660(1) also acquired the securities with the right to receive unrealised interest.
- (2) The amount of the reduction depends on whether subsection (3) applies.
- (3) This subsection applies if—
  - (a) T has received, as transferee, some or all of that unrealised interest, and
  - (b) T is liable for income tax on it for the tax year in which it was received.
- (4) If subsection (3) applies, the reduction is equal to the value on the day of the transfer to T of the right to receive the unrealised interest (“the earlier value”) less the total so received.
- (5) If subsection (3) does not apply, the reduction is equal to the earlier value.
- (6) But if the reduction under subsection (4) or (5) exceeds the amount mentioned in subsection (1), that amount is treated as reduced to nil.

#### **662 New securities issued with extra return: special rules about payments**

- (1) In the case of a transfer treated as made under section 649 (new securities issued with extra return), the amount of the payment treated as made under section 632(1) (payment on transfer with accrued interest) is not determined under section 632(2) to (5).
- (2) Instead, that amount depends on whether under the issue arrangements the person to whom the new securities are issued accounts to the issuer separately—
  - (a) for the extra return, and
  - (b) for the rest of the issue price.
- (3) If the person does account for them separately, the amount of the payment is the amount of the extra return separately accounted for.
- (4) If the person does not account for them separately, the amount of the payment is an amount equal to—

$$I \times \frac{A}{B}$$

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where—

I is the interest payable on the new securities on the first interest payment day after the new issue day (“the payment day”),

A is the number of days in the relevant period, and

B is the number of days in the period beginning with the first day of the relevant period and ending with the payment day.

- (5) Subsection (4) is subject to section 659 (transfers with or without accrued interest: interest in default).
- (6) In this section “the extra return”, “the new issue day”, “new securities” and “the relevant period” have the same meaning as in section 649.

### **663 Transfers without accrued interest to makers of manufactured payments**

- (1) This section applies if—
  - (a) the manufactured payments conditions are met (see section 647(2)), and
  - (b) the nominal value of the securities subject to the seller's contract is less than that of the securities transferred to the seller.
- (2) The amount of the payment treated as made to the seller under section 633 on the transfer of the securities to the seller is reduced.
- (3) The reduction is by so much of that amount as is attributable to securities (“the matched securities”) of a nominal value equal to that of the securities subject to the seller's contract.
- (4) If there is more than one transfer of securities to the seller, those transferred to the seller earlier are treated as the matched securities before those transferred later.
- (5) In this section “the seller” and “the seller's contract” have the same meaning as in section 647.
- (6) For cases where subsection (1)(b) does not apply, see section 647(3) (under which the seller is treated as an excluded transferee).

### **664 Foreign currency securities: sterling equivalent of payments on transfers**

- (1) The sterling equivalent of the amount of the payment treated as made on a transfer of securities is determined in accordance with this section if interest on the securities is payable in a currency other than sterling (“a foreign currency”).
- (2) If the payment is determined under section 632(3), 633(3) or 662(3) (transfers under an arrangement by which interest is accounted for separately), the amount of the payment depends on whether the sterling equivalent of the interest separately accounted for is shown in an agreement for transfer.
- (3) If the sterling equivalent is so shown, the amount of the payment is taken to be that sterling equivalent.
- (4) If the sterling equivalent is not so shown, the amount is taken to be the sterling equivalent on the settlement day of the interest separately accounted for.



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- (5) If the amount of the payment treated as made is determined under any other provision (except section 660 (transfers with unrealised interest: interest in default)), the amount is taken to be its sterling equivalent on the settlement day.
- (6) For the purposes of this section, the sterling equivalent of an amount or value in a foreign currency is to be calculated by reference to the London closing rate of exchange for the day concerned.

#### **665 Foreign currency securities: unrealised interest payable in foreign currency**

- (1) This section applies if unrealised interest is payable in a currency other than sterling (“a foreign currency”).
- (2) For the purposes of section 631(1) (amount of accrued income profits where settlement day outside interest period) the amount of the unrealised interest is taken to be its sterling equivalent on the settlement day.
- (3) For the purposes of sections 660 (transfers with unrealised interest: interest in default) and 661 (successive transfers with unrealised interest in default), the value on any day of the right to receive unrealised interest is the sterling equivalent on that day of that value in the foreign currency.
- (4) For the purposes of those sections unrealised interest received in a foreign currency is taken to be the sterling equivalent on the day of receipt of the amount received.
- (5) For the purposes of this section, the sterling equivalent of an amount or value in a foreign currency is to be calculated by reference to the London closing rate of exchange for the day concerned.

#### *Nominees and trustees*

#### **666 Certain transfers by or to nominees or trustees treated as made by or to others**

- (1) Transfers of securities by or to a person as nominee for another person (“A”) are treated for the purposes of this Chapter as transfers by or to A.
- (2) Transfers of securities by or to a person (“T”) as trustee for another person (“B”) are treated for the purposes of this Chapter as transfers by or to B if B is absolutely entitled as against T.
- (3) For the purposes of subsection (2) where T is the transferor, B is absolutely entitled as against T if immediately before the transfer B has the exclusive right to direct how the securities are to be dealt with.
- (4) For the purposes of subsection (2) where T is the transferee, B is absolutely entitled as against T if immediately after the transfer B has that exclusive right.
- (5) For the purposes of subsections (3) and (4), a right to direct how securities are to be dealt with is treated as an exclusive right despite being subject to satisfying any outstanding charge, lien or other right of the trustee to resort to the securities for payment of duty, taxes, costs or other outgoings.
- (6) Subsection (1) applies to a transfer of securities by or to a person as nominee for two or more persons as it applies to a transfer of securities by or to a person as nominee for one person, taking the references to A as references to the two or more persons.

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- (7) This section applies to a transfer of securities by or to a person as trustee for two or more persons as it applies to a transfer of securities as trustee for one person, taking—
  - (a) the references to B as references to the two or more persons, and
  - (b) the references to B being absolutely entitled as references to the two or more persons being jointly absolutely entitled.
- (8) The fact that a person is an infant or otherwise lacks legal capacity is to be disregarded in determining for the purposes of this section whether the person is absolutely entitled as against T.

## **667 Trustees' accrued income profits treated as settlement income**

- (1) If the trustees of a settlement are treated as making qualifying accrued income profits, those profits are to be taken to be income arising under the settlement for the purposes of Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor).
- (2) Subsection (3) applies if the trustees of a settlement—
  - (a) are non-UK resident or domiciled outside the United Kingdom throughout a tax year in which an interest period or part of an interest period falls, and
  - (b) would have been treated as making an amount or an additional amount of qualifying accrued income profits in the interest period if the trustees had been UK resident or domiciled in the United Kingdom during a part of each such tax year.
- (3) The amount or additional amount of qualifying accrued income profits that the trustees would have been treated as making is to be taken to be income arising under the settlement for the purposes of Chapter 5 of Part 5 of ITTOIA 2005.
- (4) In this section—
  - (a) “qualifying accrued income profits” means accrued income profits which are treated as made—
    - (i) under section 628(5), or
    - (ii) under section 630(2) in respect of a transfer of variable rate securities, and
  - (b) in any case where there are no trustees of a settlement, references to such trustees are to any persons entitled to securities comprised in the settlement.
- (5) In the case of qualifying accrued income profits within subsection (4)(a)(ii)—
  - (a) the reference in subsection (2)(a) to an interest period is to the period—
    - (i) beginning with the day after the last day of the only or last interest period of the securities, and
    - (ii) ending with the settlement day, and
  - (b) the reference in subsection (2)(b) to making qualifying accrued income profits in the interest period is to be read as making them in the tax year in which settlement day falls.

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### *Relief where transfer proceeds unremittable*

#### **668 Relief for unremittable transfer proceeds: general**

- (1) This section applies if—
  - (a) a person is liable for income tax on accrued income profits,
  - (b) the profits are calculated by reference to payments treated as made to the person in an interest period,
  - (c) the payments are so treated as a result of the person making transfers of foreign securities of a particular kind, and
  - (d) the proceeds of the transfers are unremittable in the tax year.
- (2) If the person makes a claim for relief under this section—
  - (a) the profits are reduced by the amount of the payments treated as made to the person, or
  - (b) if that amount exceeds the profits, the profits are reduced to nil.
- (3) But see section 670 (withdrawal of relief).
- (4) In this section and section 669 “foreign securities” means securities which are situated outside the United Kingdom.
- (5) For the purposes of this section and sections 669 and 670, proceeds of transfers of foreign securities are unremittable in relation to a person if the person is prevented from transferring them to the United Kingdom because of—
  - (a) the laws of the territory where the securities are situated,
  - (b) executive action of its government, or
  - (c) the impossibility of obtaining there currency that could be transferred to the United Kingdom.
- (6) For the purposes of this section the place where securities are situated is to be determined in accordance with sections 275(1) and (2)(b) and 275C of TCGA 1992.
- (7) Any claim under this section must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which the profits would be chargeable to tax if no claim were made.
- (8) A person's personal representatives may make any claim under this section which the person might have made.

#### **669 Relief for unremittable transfer proceeds: section 630 profits**

- (1) This section applies if—
  - (a) a person is liable for income tax on accrued income profits within section 630(2) (making accrued income profits: settlement day outside interest period),
  - (b) the person is so liable as a result of making transfers of foreign securities of a particular kind, and
  - (c) the proceeds of the transfers are unremittable in the tax year.
- (2) If the person makes a claim for relief under this section the profits are reduced to nil.
- (3) But see section 670 (withdrawal of relief).

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- (4) Any claim under this section must be made on or before the fifth anniversary of the normal self-assessment filing date for the tax year for which the profits would be chargeable to tax if no claim were made.
- (5) A person's personal representatives may make any claim under this section which the person might have made.

## **670      Withdrawal of relief**

- (1) This section applies if—
  - (a) a claim under section 668(2) or 669(2) has been made in relation to profits, and
  - (b) the proceeds of the transfers cease to be unremittable.
- (2) The claimant is treated as making accrued income profits of an amount equal to the reduction under that section.
- (3) If the claimant has died, the claimant's personal representatives are so treated.

### *Interpretation*

## **671      Meaning of “interest”**

- (1) In this Chapter “interest” includes dividends and any other return (however described).
- (2) But it does not include a return consisting of the difference between the amount payable on a security's redemption and its issue price.

## **672      Meaning of “interest payment day”**

- (1) In this Chapter “interest payment day”, in relation to securities of any kind, means a day on which interest on those securities is payable.
- (2) If a particular payment of interest may be made on one of a number of days, the first of them is the interest payment day.

## **673      Meaning of “interest period”**

- (1) The general rule is that for the purposes of this Chapter—
  - (a) the first interest period of securities of any kind begins with the day after that on which those securities are first issued and ends with the first interest payment day or, if it is earlier, the expiry of 12 months, and
  - (b) any other interest period of those securities begins with the day after the last day of their previous interest period and ends with the next interest payment day or, if it is earlier, the expiry of 12 months.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) The last interest period of securities of any kind ends with the last interest payment day for those securities, unless subsection (4) applies.
- (4) An interest period of securities of any kind in which either of the events specified in subsection (5) occurs is treated as ending on the day on which it would have ended apart from that event.

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- (5) The events are—
- (a) a conversion of those securities, and
  - (b) if those securities are gilt-edged securities, the exchange of those securities for strips of those securities.
- (6) In this section “strip” has the meaning given by section 444 of ITTOIA 2005.
- (7) See also section 667(5) (construction of reference to “interest period” in section 667(2)).

#### **674 Meaning of “the settlement day”**

- (1) For the purposes of this Chapter the settlement day for a transfer of securities in accordance with the rules of a recognised market is—
- (a) the day on which the transferee agrees to settle, or
  - (b) if the transferee may settle on one of a number of days, the day on which settlement actually occurs.
- (2) The settlement day for a transfer of securities which is not in accordance with such rules is determined in accordance with subsection (3), (4) or (6) (and see also section 649(6): settlement day where new securities issued with extra return).
- (3) If—
- (a) the consideration for the transfer is money alone, and
  - (b) the transferee agrees to pay the whole of it on or before the first interest payment day after an agreement for the transfer is made,
- the settlement day is the day on which the transferee agrees to make the payment or, if payment may be made on one of a number of days, or on a number of different days, the latest of them.
- (4) If—
- (a) there is no consideration for the transfer, or
  - (b) the transfer is a transfer because of a provision specified in subsection (5),
- the settlement day is the day on which the securities are transferred.
- (5) The provisions are—
- section 620(1)(b) or (c) (conversion, or redemption of variable rate securities),
  - section 648(1) or (3) (exchanges relating to strips of gilt-edged securities),
  - section 650 (trading stock appropriations etc),
  - section 651 (owner becoming entitled to securities as trustee), and
  - section 652 (securities ceasing to be held on charitable trusts).
- (6) If neither subsection (3) nor (4) applies, the settlement day is such day as an officer of Revenue and Customs decides.
- (7) The jurisdiction of the General Commissioners or the Special Commissioners on any appeal includes jurisdiction to affirm or replace such a decision.

#### **675 The holding of securities**

- (1) For the purposes of this Chapter, a person holds securities—
- (a) at a particular time if the person is entitled to them at that time, and

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- (b) on a particular day if the person is entitled to them throughout that day or becomes and does not cease to be entitled to them on that day.
- (2) A person acquires securities when the person becomes entitled to them.
- (3) If a Scottish partnership carries on a trade or business—
  - (a) any partnership dealings are treated as dealings by the partners and not by the partnership as such, and
  - (b) the partners are treated as being entitled to securities held by the partnership.

#### **676 Nominal value of securities: general**

- (1) If the interest on securities is expressed to be payable by reference to a given value, for the purposes of this Chapter their nominal value is that value.
- (2) In any other case, the nominal value of securities for those purposes is their price when they were issued.
- (3) See section 677 if the nominal value of the securities is expressed in a currency other than sterling.

#### **677 Nominal value: foreign currency securities**

- (1) If the nominal value of securities is expressed in a currency other than sterling (“a foreign currency”), for the purposes of this Chapter their nominal value on any day is taken to be the sterling equivalent on that day of that value.
- (2) For the purposes of this section, the sterling equivalent of a value in a foreign currency is to be calculated by reference to the London closing rate of exchange for the day concerned.

### **CHAPTER 3**

#### **EXEMPTIONS RELATING TO INTEREST ON SECURITIES**

#### **678 Exemptions relating to interest on securities: preliminary**

- (1) This Chapter confers exemptions relating to interest on securities.
- (2) Expressions used in this Chapter and in Chapter 2 have the same meaning as in that Chapter.
- (3) Accordingly, for the meanings of the following expressions see the sections indicated—
  - “interest” see section 671,
  - “interest payment day” see section 672,
  - “interest period” see section 673,
  - “makes accrued income losses” see section 628(6),
  - “securities” see section 619,
  - “transfer with unrealised interest” see section 625(1),
  - “transferee” see section 621,
  - “transfer” see section 620, and

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“unrealised interest” see section 625(2).

- (4) Section 666 (certain transfers by or to nominees or trustees treated as made by or to others) applies for the purposes of this Chapter as it applies for the purposes of Chapter 2.

#### **679 Interest on securities involving accrued income losses: general**

- (1) This section applies if—
- (a) a person is liable for income tax on interest on securities of any kind which is due at the end of an interest period of the securities,
  - (b) in that period accrued income losses are made as a result of transfers of those securities, and
  - (c) the period ends with an interest payment day.
- (2) No liability to income tax arises in respect of the interest to the extent that it does not exceed the losses.
- (3) If, apart from this subsection, a person would be entitled to the exemption under this section in more than one tax year, the person is so entitled only in the tax year in which the interest period ends.
- (4) For cases where the interest period does not end with an interest payment day, see section 637 (accrued income losses treated as payments in next interest period).

#### **680 Interest on securities involving accrued income losses: foreign trustees**

- (1) This section applies if—
- (a) the trustees of a settlement are non-UK resident or domiciled outside the United Kingdom throughout a tax year in which an interest period or part of an interest period of securities falls,
  - (b) the trustees' income is or includes interest from those securities,
  - (c) the interest falls due at the end of that interest period, and
  - (d) had the trustees been UK resident, or domiciled in the United Kingdom, during a part of each such tax year the interest would have been wholly or partly exempt from income tax under section 679.
- (2) No liability to income tax arises as a result of Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor) in respect of so much of the interest as would have been exempt from income tax under section 679.
- (3) For cases where the interest period does not end with an interest payment day, see section 637 (accrued income losses treated as payments in next interest period).

#### **681 Unrealised interest received by transferee after transfer**

- (1) This section applies if—
- (a) securities are transferred with unrealised interest,
  - (b) the transferee is not an excluded transferee in relation to the transfer for the purposes of Chapter 2 (see sections 638 to 647),
  - (c) the transferee receives some or all of the unrealised interest, and

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- (d) apart from this section, the transferee would be liable to income tax on the unrealised interest.
- (2) No liability to income tax arises in respect of the unrealised interest received by the transferee, unless conditions A and B are met.
- (3) Condition A is that section 660 (transfers with unrealised interest: interest in default) applies on the transfer.
- (4) Condition B is that the unrealised interest received by the transferee exceeds the residual value of the interest.
- (5) In this section “the residual value of the interest” means—
  - (a) the value on the day of the transfer of the right to receive the unrealised interest, less
  - (b) the total amount of any of that unrealised interest received previously by the transferee.
- (6) If conditions A and B are met, no liability to income tax arises in respect of the unrealised interest to the extent that it does not exceed the residual value of the interest.
- (7) Section 665 (foreign currency securities: unrealised interest payable in foreign currency) applies for the purposes of this section as it applies for the purposes of sections 660 and 661.

## PART 13

### TAX AVOIDANCE

#### CHAPTER 1

##### TRANSACTIONS IN SECURITIES

###### *Introduction*

### **682 Overview of Chapter**

- (1) This Chapter makes provision for counteracting income tax advantages obtained or obtainable by persons to whom section 684 applies in respect of a transaction or transactions in securities.
- (2) See section 698 (counteraction notices) for the way in which the income tax advantages may be counteracted.

### **683 Meaning of “income tax advantage”**

- (1) In this Chapter “income tax advantage” means—
  - (a) a relief from income tax or increased relief from income tax,
  - (b) a repayment of income tax or increased repayment of income tax,
  - (c) the avoidance or reduction of a charge to income tax or an assessment to income tax, or



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- (d) the avoidance of a possible assessment to income tax.
- (2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—
  - (a) by receipts accruing in such a way that the recipient does not pay or bear income tax on them, or
  - (b) by a deduction in calculating profits or gains.
- (3) In this section “relief from income tax” includes a tax credit.

*Person liable to counteraction of income tax advantages*

**684 Person liable to counteraction of income tax advantage**

- (1) This section applies to a person in respect of a transaction in securities or two or more such transactions if the person is in a position to obtain or has obtained an income tax advantage—
  - (a) in circumstances where any of the provisions specified in subsection (2) applies in relation to the person, and
  - (b) in consequence of—
    - (i) the transaction, or
    - (ii) the combined effect of the transactions.
- (2) The provisions are—
  - section 686 (abnormal dividends used for exemptions or reliefs (circumstance A)),
  - section 687 (deductions from profits obtained following distribution or dealings (circumstance B)),
  - section 688 (receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)),
  - section 689 (receipt of consideration in connection with relevant company distribution (circumstance D)), and
  - section 690 (receipt of assets of relevant company (circumstance E)).
- (3) For the purposes of this Chapter an income tax advantage is treated as obtained or obtainable by a person in consequence of—
  - (a) a transaction in securities, or
  - (b) the combined effect of two or more such transactions,if it is obtained or obtainable by the person in consequence of the combined effect of the transaction or transactions and the liquidation of a company.
- (4) This section is subject to—
  - section 685 (exception where no tax avoidance object shown),
  - section 696(3) (disapplication of this section where person receiving preliminary notification that this section may apply makes a statutory declaration and the relevant officer of Revenue and Customs sees no reason to take further action), and
  - section 697(5) (determination by tribunal that there is no prima facie case that this section applies).

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## **685 Exception where no tax avoidance object shown**

- (1) Section 684 does not apply to a person in respect of a transaction in securities or two or more such transactions if the person shows that the transaction or transactions meet conditions A and B.
- (2) Condition A is that the transaction or transactions are effected—
  - (a) for genuine commercial reasons, or
  - (b) in the ordinary course of making or managing investments.
- (3) Condition B is that enabling income tax advantages to be obtained is not the main object or one of the main objects of the transaction or, as the case may be, any of the transactions.

*Circumstances in which income tax advantages obtained or obtainable*

## **686 Abnormal dividends used for exemptions or reliefs (circumstance A)**

- (1) This section applies in relation to a person if subsections (2) to (4) apply.
- (2) The person receives an abnormal amount by way of dividend (see section 692).
- (3) The receipt is in connection with—
  - (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
  - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
  - (c) the distribution, transfer or realisation of assets of a company, or
  - (d) the application of such assets in discharge of liabilities.
- (4) The amount so received is taken into account for the purposes of—
  - (a) any exemption from income tax,
  - (b) the setting-off of losses against profits or income, or
  - (c) the giving of relief under section 383 (relief for interest payments).

## **687 Deductions from profits obtained following distribution or dealings (circumstance B)**

- (1) This section applies in relation to a person if subsections (2) to (4) apply.
- (2) The person becomes entitled—
  - (a) in respect of securities held or sold by the person, or
  - (b) in respect of securities formerly held by the person,to a deduction in calculating profits or gains.
- (3) The entitlement arises in connection with—
  - (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
  - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
  - (c) the distribution, transfer or realisation of assets of a company, or
  - (d) the application of such assets in discharge of liabilities.

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- (4) The entitlement arises because of a fall in the value of the securities resulting from—
  - (a) the payment of a dividend on them, or
  - (b) any other dealing with any assets of a company.
- (5) Subsection (2)(b) applies whether or not the person has sold the securities.

**688 Receipt of consideration representing company's assets, future receipts or trading stock (circumstance C)**

- (1) This section applies in relation to a person (“A”) if subsections (2), (3) and (6) apply.
- (2) A receives consideration which—
  - (a) is or represents the value of—
    - (i) assets which are available for distribution by a company by way of dividend, or
    - (ii) assets which would have been so available apart from anything done by the company,
  - (b) is received in respect of future receipts of a company, or
  - (c) is or represents the value of trading stock of a company.
- (3) The receipt is in consequence of a transaction whereby another person (“B”)—
  - (a) subsequently receives, or has received, an abnormal amount by way of dividend (see section 692), or
  - (b) subsequently becomes entitled, or has become entitled—
    - (i) in respect of securities held or sold by B, or
    - (ii) in respect of securities formerly held by B,to a deduction in calculating profits or gains, if the entitlement meets the conditions in subsections (4) and (5).
- (4) The entitlement must arise in connection with—
  - (a) the purchase of securities where the purchase is followed by the sale of the same or other securities,
  - (b) the sale of securities where the sale is followed by the purchase of the same or other securities,
  - (c) the distribution, transfer or realisation of assets of a company, or
  - (d) the application of such assets in discharge of liabilities.
- (5) The entitlement must arise because of a fall in the value of the securities resulting from—
  - (a) the payment of a dividend on them, or
  - (b) any other dealing with any assets of a company.
- (6) The receipt of the consideration is such that A does not pay or bear income tax on it (apart from this Chapter).
- (7) The assets mentioned in subsection (2) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (8) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

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(9) Subsection (3)(b)(ii) applies whether or not B has sold the securities.

## **689 Receipt of consideration in connection with relevant company distribution (circumstance D)**

- (1) This section applies in relation to a person if subsections (2) to (4) apply.
- (2) The person receives consideration in connection with—
  - (a) the distribution, transfer or realisation of assets of a relevant company (see section 691), or
  - (b) the application of such assets in discharge of liabilities.
- (3) The consideration—
  - (a) is or represents the value of—
    - (i) assets which are available for distribution by way of dividend by the company, or
    - (ii) assets which would have been so available apart from anything done by the company,
  - (b) is received in respect of future receipts of the company, or
  - (c) is or represents the value of trading stock of the company.
- (4) The person so receives the consideration that the person does not pay or bear income tax on it (apart from this Chapter).
- (5) The assets mentioned in subsection (3) do not include assets which are shown to represent a return of sums paid by subscribers on the issue of securities, despite the fact that under the law of the country in which the company is incorporated assets of that description are available for distribution by way of dividend.
- (6) In this section references to the receipt of consideration include references to the receipt of any money or money's worth.

## **690 Receipt of assets of relevant company (circumstance E)**

- (1) This section applies in relation to a person if subsections (2) to (4) and (7) apply.
- (2) The person receives consideration in connection with—
  - (a) the direct or indirect transfer of assets of a relevant company (see section 691) to another such company, or
  - (b) any transaction in securities in which two or more relevant companies are concerned.
- (3) The consideration is or represents the value of assets which—
  - (a) are available for distribution by way of dividend by a relevant company,
  - (b) would have been so available apart from anything done by the company, or
  - (c) are trading stock of a relevant company.
- (4) The consideration consists of any share capital or any security issued by a relevant company.
- (5) So far as subsection (4) relates to share capital other than redeemable share capital, it applies only so far as the share capital is repaid (in a winding up or otherwise).

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- (6) The reference in subsection (5) to the repayment of share capital includes a reference to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (7) The person does not pay or bear income tax on the consideration (apart from this Chapter).
- (8) In this section—
  - (a) references to the receipt of consideration include references to the receipt of any money or money's worth,
  - (b) “security” has the meaning given in section 254(1) of ICTA (interpretation of Part 6 of ICTA: company distributions, tax credits etc), and
  - (c) “share” includes stock and any other interest of a member in a company.

## **691 Meaning of “relevant company” in sections 689 and 690**

- (1) A company is a relevant company for the purposes of sections 689 and 690 if it is—
  - (a) a company under the control of not more than 5 persons (but see subsection (2)), or
  - (b) any other company none of whose shares or stocks is—
    - [<sup>F115</sup>(i) included in the official UK list, and]
    - [<sup>F115</sup>(ii) dealt in on a recognised stock exchange in the United Kingdom regularly or from time to time.]
- (2) A company is not a relevant company for those purposes if it is under the control of one or more companies which are not relevant companies for those purposes.
- (3) The reference in subsection (1)(b) to shares or stocks does not include debenture stock, preferred shares or preferred stock.
- (4) In this section “control” has the meaning given by section 416(2) to (6) of ICTA (close companies: meaning of “associated company” and “control”).

### **Textual Amendments**

**F115** S. 691(1)(b)(i)(ii) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(11\)](#)

## **692 Abnormal dividends: general**

- (1) An amount received by way of dividend is treated as abnormal for the purposes of this Chapter if the appropriate authority is satisfied—
  - (a) in any case that the excessive return condition is met (see section 693), or
  - (b) in the case of a dividend at a fixed rate, that the excessive accrual condition is met (see section 694).
- (2) In subsection (1) “the appropriate authority” means whichever of the following is determining the question whether the amount is abnormal for the purposes of this Chapter—
  - (a) an officer of Revenue and Customs,
  - (b) the Commissioners for Her Majesty's Revenue and Customs,
  - (c) the Special Commissioners, or

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- (d) the tribunal appointed under section 704.

### 693 Abnormal dividends: the excessive return condition

- (1) The excessive return condition is that the dividend substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities.
- (2) In this section “the relevant securities” means—
  - (a) the securities in respect of which the dividend was received, and
  - (b) if those securities are derived from securities previously acquired by the recipient, the securities which were previously acquired.
- (3) In determining whether an amount received by way of dividend exceeds a normal return, regard must be had—
  - (a) to the length of time before its receipt that the recipient first acquired any of the relevant securities, and
  - (b) to any dividends paid and other distributions made in respect of them during that time.
- (4) If—
  - (a) the consideration provided by the recipient for any of the relevant securities exceeded their market value at the time the recipient acquired them, or
  - (b) no consideration was so provided,
 for the purposes of subsection (1) consideration equal to that market value is taken to have been so provided.

### 694 Abnormal dividends: the excessive accrual condition

- (1) The excessive accrual condition is that the dividend substantially exceeds the amount which the recipient would have received if—
  - (a) the dividend had accrued from day to day, and
  - (b) the recipient had been entitled to only so much of the dividend as accrued while the recipient held the securities.
- (2) But the excessive accrual condition is treated as not being met if during the period of 6 months beginning with the purchase of the securities the recipient does not—
  - (a) sell or otherwise dispose of any of the securities or any securities similar to them, or
  - (b) acquire an option to sell any of the securities or any securities similar to them.
- (3) For the purposes of subsection (2) securities are taken to be similar if they entitle their holders—
  - (a) to the same rights against the same persons as to capital and interest, and
  - (b) to the same remedies for the enforcement of those rights.
- (4) For the purposes of subsection (3) rights guaranteed by the Treasury are treated as rights against the Treasury.
- (5) Subsection (3) applies despite any differences—
  - (a) in the total nominal amounts of the respective securities,
  - (b) in the form in which they are held, or
  - (c) in the manner in which they can be transferred.

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### *Procedure for counteraction of income tax advantages*

#### **695 Preliminary notification that section 684 may apply**

- (1) An officer of Revenue and Customs must notify a person if the officer has reason to believe that—
  - (a) section 684 (person liable to counteraction of income tax advantage) may apply to the person in respect of a transaction or transactions, and
  - (b) a counteraction notice ought to be served on the person under section 698 about the transaction or transactions.
- (2) The notification must specify the transaction or transactions.
- (3) See section 698 for the serving of counteraction notices, and sections 696 and 697 for cases where the person on whom the notice under this section is served disagrees that section 684 applies.

#### **696 Opposed notifications: statutory declarations**

- (1) If a person on whom a notification is served under section 695 is of the opinion that section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions specified in the notification, the person may—
  - (a) make a statutory declaration to that effect, stating the facts and circumstances on which the opinion is based, and
  - (b) send it to the officer of Revenue and Customs.
- (2) Such a declaration must be sent within 30 days of the issue of the notification.
- (3) If the person sends that declaration to the officer and the officer sees no reason to take further action—
  - (a) section 684 does not so apply, and
  - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.

#### **697 Opposed notifications: determinations by tribunal**

- (1) This section applies if the officer of Revenue and Customs receiving a statutory declaration under section 696(1) sees reason to take further action about the transaction or transactions in question.
- (2) The officer must send the tribunal appointed under section 704 a certificate to that effect, together with the statutory declaration.
- (3) The officer may also send the tribunal a counter-statement with the certificate.
- (4) The tribunal must—
  - (a) consider the declaration and certificate and any counter-statement, and
  - (b) determine whether there is a *prima facie* case for the officer to take further action on the basis that section 684 (person liable to counteraction of income tax advantage) applies to the person by whom the declaration was made in respect of the transaction or transactions in question.
- (5) If the tribunal determines that there is no such case—

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- (a) section 684 does not so apply, and
  - (b) accordingly no counteraction notice may be served on the person under section 698 about the transaction or transactions.
- (6) But such a determination does not affect the application of sections 684 and 698 in respect of transactions including not only the ones to which the determination relates but also others.

## **698 Counteraction notices**

- (1) If—
- (a) a person on whom a notification is served under section 695 does not send a statutory declaration to an officer of Revenue and Customs under section 696 within 30 days of the issue of the notification, or
  - (b) the tribunal to which such a declaration is sent under section 697 determines that there is a *prima facie* case for serving a notice on a person under this section,
- the income tax advantage in question is to be counteracted by adjustments.
- (2) The adjustments required to be made to counteract the income tax advantage and the basis on which they are to be made are to be specified in a notice served on the person by an officer of Revenue and Customs.
- (3) In this Chapter such a notice is referred to as a “counteraction notice”.
- (4) Any of the following adjustments may be specified—
- (a) an assessment,
  - (b) the nullifying of a right to repayment,
  - (c) the requiring of the return of a repayment already made, or
  - (d) the calculation or recalculation of profits or gains or liability to income tax.
- (5) Nothing in this section authorises the making of an assessment later than 6 years after the tax year to which the income tax advantage relates.
- (6) This section is subject to—
- section 699 (limit on amount assessed in section 689 and 690 cases),
  - section 700 (timing of assessments in section 690 cases), and
  - section 702(2) (effect of clearance notification under section 701).
- (7) But no other provision in the Income Tax Acts is to be read as limiting the powers conferred by this section.

## **699 Limit on amount assessed in section 689 and 690 cases**

- (1) This section applies if a counteraction notice is served in a case where the income tax advantage—
- (a) consists of the avoidance of a charge to income tax, and
  - (b) is obtained by a person in circumstances falling within—
- section 689 (receipt of consideration in connection with relevant company distribution (circumstance D)), or
  - section 690 (receipt of assets of relevant company (circumstance E)).



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- (2) The amount of income tax which may be specified in an assessment made in accordance with the notice must not exceed the qualifying distribution equivalent.
- (3) The qualifying distribution equivalent is the amount of income tax for which the person would be liable if—
  - (a) the person received a qualifying distribution on the date on which the consideration mentioned in section 689 or, as the case may be, section 690 is received, and
  - (b) that distribution were of an amount equal to the amount or value of that consideration.

## **700 Timing of assessments in section 690 cases**

- (1) This section applies if section 684 (person liable to counteraction of income tax advantage) applies to a person because the person is in a position to obtain or has obtained an income tax advantage by falling within the circumstances mentioned in section 690 (receipt of relevant company assets (circumstance E)) when share capital is repaid.
- (2) An assessment to income tax made in accordance with a counteraction notice must be an assessment for the tax year in which the repayment occurs.
- (3) The references in this section to the repayment of share capital include references to any distribution made in respect of any shares in a winding up or dissolution of the company.
- (4) In subsection (3) “shares” includes stock and any other interest of a member in a company.

### *Clearance procedure and information powers*

## **701 Application for clearance of transactions**

- (1) A person may provide the Commissioners for Her Majesty's Revenue and Customs with particulars of a transaction or transactions effected or to be effected by the person in order to obtain a notification about them under this section.
- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the person what further information they require for those purposes within 30 days of receiving the particulars or further information.
- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section.
- (4) The Commissioners must notify the person whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required.

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## **702 Effect of clearance notification under section 701**

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a person under section 701 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction notice ought to be served about the transaction or transactions.
- (2) No such notice may be served on the person in respect of the transaction or transactions.
- (3) But the notification does not prevent such a notice being served on the person in respect of transactions including not only the ones to which the notification relates but also others.
- (4) The notification is void if the particulars and any further information given under section 701 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

## **703 Power to obtain information**

- (1) This section applies if it appears to an officer of Revenue and Customs that a person may be a person to whom section 684 (person liable to counteraction of income tax advantage) applies in respect of one or more transactions.
- (2) The officer may serve a notice on the person requiring the person to give the officer information in the person's possession about the transaction or, if there are two or more, about any of them.
- (3) That information must be information about matters which are relevant to the question whether a counteraction notice should be served on the person.
- (4) Those matters must be specified in the notice under subsection (2).
- (5) That notice must require the information to be given within such period as is specified in it.
- (6) That period must be at least 30 days.

### *The tribunal*

## **704 The tribunal**

- (1) The tribunal for the purposes of this Chapter consists of—
  - (a) a chairman appointed by the Lord Chancellor, and
  - (b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.
- (2) A person appointed as chairman or other member of the tribunal must vacate the office on attaining the age of 70.
- (3) But subsection (2) is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (c. 8) (power to authorise continuance in office up to the age of 75).

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## *Appeals*

### **705 Appeals against counteraction notices**

- (1) A person on whom a counteraction notice has been served may appeal to the Special Commissioners on the grounds that—
  - (a) section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions in question, or
  - (b) the adjustments directed to be made are inappropriate.
- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.
- (3) On an appeal under this section the Special Commissioners may—
  - (a) affirm, vary or cancel the counteraction notice, or
  - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (4) But the bringing of an appeal under this section (or a request for its rehearing under section 706) does not affect—
  - (a) the validity of the counteraction notice, or
  - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),pending the determination of the proceedings.

### **706 Rehearing by tribunal of appeal against counteraction notice**

- (1) The appellant or an officer of Revenue and Customs may, if dissatisfied with the determination of the Special Commissioners under section 705, require the appeal to be reheard by the tribunal appointed under section 704.
- (2) Such a request may be made only by giving notice to the Clerk to the Special Commissioners within 30 days after the determination.
- (3) If such a request is made—
  - (a) the Special Commissioners must transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal, and
  - (b) the tribunal must rehear and determine the appeal.
- (4) The tribunal has the same powers in relation to the appeal as the Special Commissioners.
- (5) On the rehearing of an appeal under this section, the tribunal may—
  - (a) affirm, vary or cancel the counteraction notice, or
  - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (6) The tribunal's determination is final and conclusive (but see sections 707 to 711).

### **707 Statement of case by tribunal for opinion of High Court or Court of Session**

- (1) This section applies if the appellant or an officer of Revenue and Customs ("the dissatisfied party") is dissatisfied with the tribunal's determination under section 706 on the rehearing of an appeal as being wrong in law.

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- (2) The dissatisfied party may, within 30 days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court or in Scotland the Court of Session.
- (3) The dissatisfied party is entitled to have the case stated only on payment of a fee of £25 to the tribunal.
- (4) The case must set out the facts and the determination of the tribunal.
- (5) The dissatisfied party must—
  - (a) within 30 days after receiving the stated and signed case, transmit it to the High Court or in Scotland the Court of Session, and
  - (b) not later than transmitting the case, send to the other party—
    - (i) notice in writing that the case has been stated on the dissatisfied party's application, and
    - (ii) a copy of the case.
- (6) The statement of a case under this section does not affect—
  - (a) the validity of the counteraction notice, or
  - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),pending the determination of the proceedings.
- (7) In this section and sections 708 to 710 references to the Court of Session are references to the Court of Session sitting as the Court of Exchequer.

## **708 Cases before High Court or Court of Session**

- (1) The High Court or in Scotland the Court of Session must hear and determine any question of law arising on a case transmitted to the Court under section 707(5).
- (2) The Court may—
  - (a) affirm, reverse or amend the determination in respect of which the case has been stated,
  - (b) remit the matter to the tribunal with the Court's opinion on it, or
  - (c) make such other order about the matter as it considers appropriate.
- (3) The Court may send the case back for amendment.
- (4) A case sent back for amendment must be amended accordingly, and judgment must be delivered after it has been amended.

## **709 Effect of appeals against tribunal's determination under section 706**

- (1) This section applies if the tribunal has made a determination under section 706 about an assessment and a case—
  - (a) has been required to be stated about it under section 707(2), or
  - (b) is pending before the High Court or the Court of Session.
- (2) Income tax must be paid in accordance with the determination except so far as subsection (3) or (4) applies.

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- (3) If the amount charged is reduced by the order or judgment of the Court, the overpaid tax must be refunded with such interest, if any, as the Court may allow.
- (4) If the amount charged is increased by the order or judgment, an officer of Revenue and Customs must issue the person assessed with a notice of the total amount payable in accordance with the order or judgment.
- (5) The tax undercharged is due and payable at the end of the period of 30 days beginning with the date on which the notice is issued.

## **710 Appeals from High Court or Court of Session**

- (1) In the case of a decision under section 708 of the High Court, an appeal lies to the Court of Appeal and from there to the Supreme Court.
- (2) But that is subject to subsection (3) and to Part 2 of the Administration of Justice Act 1969 (c. 58) (appeal from High Court to Supreme Court).
- (3) No appeal lies to the Supreme Court from the Court of Appeal except with the leave of the Court of Appeal or the Supreme Court.
- (4) In the case of a decision under section 708 of the Court of Session, an appeal lies to the Supreme Court.

## **711 Proceedings in Northern Ireland**

- (1) A case which is stated by the tribunal under section 707 (statement of case by tribunal for opinion of High Court or Court of Session) in proceedings in Northern Ireland is a case for the opinion of the Court of Appeal in Northern Ireland.
- (2) The Income Tax Acts and TMA 1970 have effect as if—
  - (a) section 707 applied in relation to such proceedings with the omission of subsections (4) and (5), and
  - (b) that section and sections 708 and 709 applied in relation to such proceedings with the substitution of references to the Court of Appeal in Northern Ireland for references to the High Court.
- (3) The procedure relating to—
  - (a) transmitting the case to the Court of Appeal in Northern Ireland, and
  - (b) the hearing and determination of the case by that Court,is that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction.
- (4) An appeal lies from the Court of Appeal in Northern Ireland to the Supreme Court in accordance with section 42 of the Judicature (Northern Ireland) Act 1978 (c. 23).
- (5) If in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under section 707 as applied by this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.
- (6) In this section “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to TMA 1970 is in Northern Ireland.

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## *Supplementary*

### **712 Application of Chapter where individual within section 684 dies**

- (1) This section applies if an individual to whom section 684 (person liable to counteraction of income tax advantage) applies (or may apply) has died.
- (2) Any notice or notification to the individual under this Chapter may be given to the individual's personal representatives.
- (3) The provisions of this Chapter relating to any such notice or notification, to the making of a statutory declaration, to rights of appeal and to the giving of information must be read accordingly.

### **713 Interpretation of Chapter**

In this Chapter—

- “company” includes any body corporate,
- “dividends” includes references to other qualifying distributions and to interest,
- “securities”—
  - (a) includes shares and stock, and
  - (b) in relation to a company not limited by shares (whether or not it has a share capital) also includes a reference to the interest of a member of the company as such, whatever the form of that interest,
- “trading stock” has the meaning given by section 174 of ITTOIA 2005, and
- “transaction in securities” means transactions, of whatever description, relating to securities, and in particular—
  - (a) the purchase, sale or exchange of securities,
  - (b) issuing or securing the issue of new securities,
  - (c) applying or subscribing for new securities, and
  - (d) altering or securing the alteration of the rights attached to securities.

## **CHAPTER 2**

### TRANSFER OF ASSETS ABROAD

## *Introduction*

### **714 Overview of Chapter**

- (1) This Chapter imposes a charge to income tax on—
  - (a) individuals to whom income is treated as arising under section 721 (individuals with power to enjoy income as a result of relevant transactions),
  - (b) individuals to whom income is treated as arising under section 728 (individuals receiving capital sums as a result of relevant transactions), and
  - (c) individuals to whom income is treated as arising under section 732 (non-transferors receiving a benefit as a result of relevant transactions).

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- (2) The charges apply only if a relevant transfer occurs, and they operate by reference to income of a person abroad that is connected with the transfer or another relevant transaction.
- (3) For the meaning of “relevant transaction”, “relevant transfer” and “person abroad”, see sections 715, 716 and 718 respectively.
- (4) In this Chapter references to individuals include their spouses or civil partners.

#### **715 Meaning of “relevant transaction”**

- (1) A transaction is a relevant transaction for the purposes of this Chapter if it is—
  - (a) a relevant transfer, or
  - (b) an associated operation.
- (2) For the meaning of “relevant transfer” and “associated operation”, see sections 716 and 719 respectively.

#### **716 Meaning of “relevant transfer” and “transfer”**

- (1) A transfer is a relevant transfer for the purposes of this Chapter if—
  - (a) it is a transfer of assets, and
  - (b) as a result of—
    - (i) the transfer,
    - (ii) one or more associated operations, or
    - (iii) the transfer and one or more associated operations,income becomes payable to a person abroad.
- (2) In this Chapter “transfer”, in relation to rights, includes the creation of the rights.
- (3) For the meaning of “assets”, see section 717.

#### **717 Meaning of “assets” etc**

In this Chapter—

- (a) “assets” includes property or rights of any kind, and
- (b) references to assets representing any assets, income or accumulations of income include references to—
  - (i) shares in or obligations of any company to which the assets, income or accumulations are or have been transferred, or
  - (ii) obligations of any other person to whom the assets, income or accumulations are or have been transferred.

#### **718 Meaning of “person abroad” etc**

- (1) In this Chapter “person abroad” means a person who is resident or domiciled outside the United Kingdom.
- (2) For the purposes of this Chapter, the following persons are treated as resident outside the United Kingdom—

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- (a) a UK resident body corporate that is incorporated outside the United Kingdom,
- (b) the person treated as neither UK resident nor ordinarily UK resident under section 475(3) (trustees of settlements), and
- (c) persons treated as non-UK resident under section 834(4) (personal representatives).

## 719 Meaning of “associated operation”

- (1) In this Chapter “associated operation”, in relation to a transfer of assets, means an operation of any kind effected by any person in relation to—
  - (a) any of the assets transferred,
  - (b) any assets directly or indirectly representing any of the assets transferred,
  - (c) the income arising from any assets within paragraph (a) or (b), or
  - (d) any assets directly or indirectly representing the accumulations of income arising from any assets within paragraph (a) or (b).
- (2) It does not matter whether the operation is effected before, after or at the same time as the transfer.

*Charge where power to enjoy income*

## 720 Charge to tax on income treated as arising under section 721

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ordinarily UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 721 (individuals with power to enjoy income as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.
- (4) But see section 724 (special rules where benefit provided out of income of person abroad).
- (5) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (6) For rules about the reduction in the amount charged in some circumstances and the availability of deductions and reliefs, see—
  - section 725 (reduction in amount charged where controlled foreign company involved), and
  - section 746 (deductions and reliefs where individual charged under this section or section 727).
- (7) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).



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## **721 Individuals with power to enjoy income as a result of relevant transactions**

- (1) Income is treated as arising to such an individual as is mentioned in section 720(1) in a tax year for income tax purposes if conditions A and B are met.
- (2) Condition A is that the individual has power in the tax year to enjoy income of a person abroad as a result of—
  - (a) a relevant transfer,
  - (b) one or more associated operations, or
  - (c) a relevant transfer and one or more associated operations.
- (3) Condition B is that the income would be chargeable to income tax if it were the individual's and received by the individual in the United Kingdom.
- (4) For the purposes of subsection (2), it does not matter whether the income may be enjoyed immediately or only later.
- (5) It does not matter for the purposes of this section—
  - (a) whether the income would be chargeable to income tax apart from section 720,
  - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer is made, or
  - (c) whether the avoiding of liability to income tax is a purpose for which the transfer is effected.
- (6) For the circumstances in which an individual is treated as having the power to enjoy income for the purposes of this section, see section 722.

## **722 When an individual has power to enjoy income of person abroad**

- (1) For the purposes of section 721, an individual is treated as having power to enjoy income of a person abroad if any of the enjoyment conditions are met.
- (2) In subsection (1) “the enjoyment conditions” means conditions A to E as specified in section 723.
- (3) In determining whether an individual has power to enjoy income for the purposes of section 721, regard must be had to the substantial result and effect of all the relevant transactions.
- (4) In making that determination all benefits which may at any time accrue to the individual as a result of the transfer and any associated operations must be taken into account, irrespective of—
  - (a) the nature or form of the benefits, or
  - (b) whether the individual has legal or equitable rights in respect of the benefits.

## **723 The enjoyment conditions**

- (1) Condition A is that the income is in fact so dealt with by any person as to be calculated at some time to enure for the benefit of the individual, whether in the form of income or not.
- (2) Condition B is that the receipt or accrual of the income operates to increase the value to the individual—
  - (a) of any assets the individual holds, or

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- (b) of any assets held for the individual's benefit.
- (3) Condition C is that the individual receives or is entitled to receive at any time any benefit provided or to be provided out of the income or related money.
- (4) In subsection (3) “related money” means money which is or will be available for the purpose of providing the benefit as a result of the effect or successive effects—
  - (a) on the income, and
  - (b) on any assets which directly or indirectly represent the income, of the associated operations referred to in section 721(2).
- (5) Condition D is that the individual may become entitled to the beneficial enjoyment of the income if one or more powers are exercised or successively exercised.
- (6) For the purposes of subsection (5) it does not matter—
  - (a) who may exercise the powers, or
  - (b) whether they are exercisable with or without the consent of another person.
- (7) Condition E is that the individual is able in any manner to control directly or indirectly the application of the income.

#### **724 Special rules where benefit provided out of income of person abroad**

- (1) This section applies if an individual has power to enjoy income of a person abroad for the purposes of section 721 because of receiving any such benefit as is referred to in section 723(3) (benefit provided out of income of person abroad).
- (2) Despite anything in section 720, the individual is liable to income tax under that section for the tax year in which the benefit is received on the whole of the amount or value of that benefit.
- (3) But subsection (2) does not apply so far as it is shown that the benefit derives directly or indirectly from income on which the individual has already been charged to income tax for that tax year or a previous tax year.

#### **725 Reduction in amount charged where controlled foreign company involved**

- (1) This section applies if—
  - (a) an amount of the chargeable profits for an accounting period of a company (“the controlled foreign company”) is apportioned to one or more UK resident companies under section 747(3) of ICTA (imputation of chargeable profits and creditable tax of controlled foreign companies),
  - (b) as a result of section 747(4) of that Act those companies are chargeable in respect of the amount (“the chargeable amount”) of the chargeable profits so apportioned to them, and
  - (c) apart from this section, the amount of income treated as arising to an individual under section 721 for a tax year would be or include a sum forming part of the controlled foreign company's chargeable profits for that accounting period.
- (2) The amount of income so treated is reduced by—

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$$S \times \frac{CA}{CP}$$

where—

S is the sum forming part of the controlled foreign company's chargeable profits for that accounting period,

CA is the chargeable amount, and

CP is the controlled foreign company's chargeable profits for that accounting period.

- (3) The following provisions of ICTA apply for the purposes of this section as they apply for the purposes of Chapter 4 of Part 17 of that Act—
- section 747(6) (interpretation, in relation to a non-UK resident company, of references to chargeable profits for an accounting period and profits), and
- section 751(1) to (5A) (accounting periods).

## **726 Non-domiciled individuals**

- (1) An individual is not chargeable to income tax under section 720 in respect of any income treated as arising to the individual under section 721 if conditions A and B are met.
- (2) Condition A is that the individual is domiciled outside the United Kingdom.
- (3) Condition B is that if the income had in fact been the individual's income, because of being so domiciled the individual would not have been chargeable to income tax in respect of it.

*Charge where capital sums received*

## **727 Charge to tax on income treated as arising under section 728**

- (1) The charge under this section applies for the purpose of preventing the avoiding of liability to income tax by individuals who are ordinarily UK resident by means of relevant transfers.
- (2) Income tax is charged on income treated as arising to such an individual under section 728 (individuals receiving capital sums as a result of relevant transactions).
- (3) Tax is charged under this section on the amount of income treated as arising in the tax year.
- (4) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (5) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

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- (6) For rules about the availability of deductions and reliefs where income is charged under this section, see section 746 (deductions and reliefs where individual charged under section 720 or this section).

## **728 Individuals receiving capital sums as a result of relevant transactions**

- (1) Income is treated as arising to such an individual as is referred to in section 727(1) in a tax year for income tax purposes if—
- (a) income has become the income of a person abroad as a result of—
    - (i) a relevant transfer,
    - (ii) one or more associated operations, or
    - (iii) a relevant transfer and one or more associated operations, and
  - (b) the capital receipt conditions are met in respect of the individual in the tax year (see section 729).
- (2) Section 725 (reduction in amount charged where controlled foreign company involved) applies for determining the amount of income treated as arising under subsection (1) as it applies for determining the amount so treated under section 721(1).
- (3) It does not matter for the purposes of this section—
- (a) whether the income would be chargeable to income tax apart from section 727,
  - (b) whether the individual is ordinarily UK resident at the time when the relevant transfer abroad is made, or
  - (c) whether the avoiding of liability to income tax is a purpose for which that transfer is effected.

## **729 The capital receipt conditions**

- (1) For the purposes of section 728(1), the capital receipt conditions are met in respect of the individual in a tax year (“the relevant year”) if—
- (a) either—
    - (i) in the relevant year the individual receives or is entitled to receive any capital sum, whether before or after the relevant transfer, or
    - (ii) in any earlier tax year the individual has received any capital sum, whether before or after the relevant transfer, and
  - (b) the payment of that sum is (or, in the case of an entitlement, would be) in any way connected with any relevant transaction.
- (2) But subsection (1)(a)(ii) does not apply merely because of the receipt of a sum by way of loan if the loan is wholly repaid before the relevant year begins.
- (3) In subsection (1) “capital sum” means—
- (a) any sum paid or payable by way of loan or repayment of a loan, and
  - (b) any other sum paid or payable—
    - (i) otherwise than as income, and
    - (ii) not for full consideration in money or money's worth.
- (4) For the purposes of subsection (1), a sum is treated as a capital sum which the individual (“A”) receives or is entitled to receive if another person receives or is entitled to receive it—
- (a) at A's direction, or

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- (b) as a result of the assignment by A of A's right to receive it.

### **730 Non-domiciled individuals**

- (1) An individual is not chargeable to income tax under section 727 in respect of any income treated as arising to the individual under section 728 if conditions A and B are met.
- (2) Condition A is that the individual is domiciled outside the United Kingdom.
- (3) Condition B is that if the income had in fact been the individual's income, because of being so domiciled the individual would not have been chargeable to income tax in respect of it.

#### *Charge where benefit received*

### **731 Charge to tax on income treated as arising under section 732**

- (1) Income tax is charged on income treated as arising to an individual under section 732 (non-transferors receiving a benefit as a result of relevant transactions).
- (2) Tax is charged under this section on the amount of income treated as arising for the tax year.
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) For exemptions from the charge under this section, see sections 736 to 742 (exemptions where no tax avoidance purpose or genuine commercial transaction).

### **732 Non-transferors receiving a benefit as a result of relevant transactions**

- (1) This section applies if—
  - (a) a relevant transfer occurs,
  - (b) an individual who is ordinarily UK resident receives a benefit,
  - (c) the benefit is provided out of assets which are available for the purpose as a result of—
    - (i) the transfer, or
    - (ii) one or more associated operations,
  - (d) the individual is not liable to income tax under section 720 or 727 by reference to the transfer and would not be so liable if the effect of sections 726 and 730 were ignored, and
  - (e) the individual is not liable to income tax on the amount or value of the benefit (apart from section 731).
- (2) Income is treated as arising to the individual for income tax purposes for any tax year for which section 733 provides that income arises.
- (3) Also see that section for the amount of income treated as arising for any such tax year.

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### 733 Income charged under section 731

- (1) To find the amount (if any) of the income treated as arising under section 732(2) for any tax year in respect of benefits provided as mentioned in section 732(1)(c) take the following steps.

#### *Step 1*

Identify the amount or value of such benefits received by the individual in the tax year and in any earlier tax years in which section 732 has applied.

The sum of those amounts and values is “the total benefits”.

#### *Step 2*

Deduct from the total benefits the total amount of income treated as arising to the individual under section 732(2) for earlier tax years as a result of the relevant transfer or associated operations.

The result is “the total untaxed benefits”.

#### *Step 3*

Identify the amount of any income which—

- (a) arises in the tax year to a person abroad, and
- (b) as a result of the relevant transfer or associated operations can be used directly or indirectly for providing a benefit for the individual.

That amount is “the relevant income of the tax year” in relation to the individual and the tax year.

#### *Step 4*

Add together the relevant income of the tax year and the relevant income of earlier tax years in relation to the individual (identified as mentioned in Step 3).

The sum of those amounts is “total relevant income”.

#### *Step 5*

Deduct from total relevant income—

- (a) the amount deducted at Step 2, and
- (b) any other amount which may not be taken into account because of section 743(1) and (2) (no duplication of charges).

The result is “the available relevant income”.

#### *Step 6*

Compare the total untaxed benefits and the available relevant income.

The amount of the income treated as arising under section 732(2) for any tax year is the total untaxed benefits unless the available relevant income is lower.

If the available relevant income is lower, it is the amount of income treated as so arising.

- (2) Subsection (1) is subject to section 734 (reduction in amount charged: previous capital gains tax charge).

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- (3) See also section 740(5) to (7) (which makes provision about relevant income and benefits where relevant transactions include both transactions before 5 December 2005 and transactions after 4 December 2005 and exemptions under this Chapter cease to apply).

### **734 Reduction in amount charged: previous capital gains tax charge**

- (1) This section applies if—
- (a) benefits provided as mentioned in section 732(1)(c) are received in a tax year,
  - (b) for that tax year the whole or part of any benefits so provided is a capital payment to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, TCGA 1992 applies (chargeable gains: gains attributed to beneficiaries),
  - (c) it is such a payment because the total untaxed benefits exceed the available relevant income (see Step 6 in section 733(1)) and so it is not treated as income arising to the individual under section 732(2), and
  - (d) because of that capital payment chargeable gains are treated as accruing to the individual in that or a subsequent tax year under any of the provisions referred to in paragraph (b).
- (2) For any tax year after one in which such chargeable gains are so treated, the amount of income treated as arising to the individual under section 732(2) in respect of benefits provided as mentioned in section 732(1)(c) as a result of the transfer or operations in question is calculated as follows.
- (3) The amount is calculated under section 733(1) as if the total untaxed benefits were reduced by the amount of those gains.
- (4) In this section “the total untaxed benefits” and “the available relevant income” have the same meaning as in section 733(1) (see Steps 2 and 5).

### **735 Non-domiciled individuals**

- (1) This section applies if—
- (a) apart from this section, an individual receiving a benefit would be chargeable to income tax under section 731 in respect of any income treated as arising to the individual (“the chargeable amount”), and
  - (b) conditions A to C are met.
- (2) Condition A is that the individual is domiciled outside the United Kingdom.
- (3) Condition B is that the benefit is not received in the United Kingdom.
- (4) Condition C is that, if the individual had received any of the relevant income by reference to which the chargeable amount is determined under section 733, because of being domiciled outside the United Kingdom the individual would not have been chargeable to income tax in respect of it.
- (5) If this section applies, the individual is not chargeable to income tax under section 731 on so much of the chargeable amount as is determined by reference to the relevant income to which condition C applies.

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- (6) Sections 833 and 834 of ITTOIA 2005 (income treated as remitted to the United Kingdom) apply for the purposes of this section as they would apply for the purposes of section 832 of that Act (remittance basis) if the benefit were relevant foreign income.

*Exemptions: no tax avoidance purpose or genuine commercial transaction*

### **736 Exemptions: introduction**

- (1) Sections 737 to 742 deal with exemptions from liability under this Chapter.
- (2) Some exemptions apply according to whether the relevant transactions are all pre-5 December 2005 transactions or all post-4 December 2005 transactions or include both (see sections 737, 739 and 740).
- (3) In this section and sections 737 to 742—
  - “post-4 December 2005 transaction” means a relevant transaction effected on or after 5 December 2005, and
  - “pre-5 December 2005 transaction” means a relevant transaction effected before 5 December 2005.

### **737 Exemption: all relevant transactions post-4 December 2005 transactions**

- (1) This section applies if all the relevant transactions are post-4 December 2005 transactions.
- (2) An individual is not liable to income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs—
  - (a) that Condition A is met, or
  - (b) in a case where Condition A is not met, that Condition B is met.
- (3) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.
- (4) Condition B is that—
  - (a) all the relevant transactions were genuine commercial transactions (see section 738), and
  - (b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.
- (5) In determining the purposes for which the relevant transactions or any of them were effected, the intentions and purposes of any person within subsection (6) are to be taken into account.
- (6) A person is within this subsection if, whether or not for consideration, the person—
  - (a) designs or effects, or
  - (b) provides advice in relation to,
 the relevant transactions or any of them.



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(7) In this section—

“revenue” includes taxes, duties and national insurance contributions,

“taxation” includes any revenue for whose collection and management the Commissioners for Her Majesty's Revenue and Customs are responsible.

(8) If—

(a) apart from this subsection, an associated operation would not be taken into account for the purposes of this section, and

(b) the conditions in subsections (2) to (4) are not met if it is taken into account, because of—

(i) the associated operation, or

(ii) the associated operation taken together with any other relevant transactions,

it must be taken into account for those purposes.

### **738 Meaning of “commercial transaction”**

(1) For the purposes of section 737, a relevant transaction is a commercial transaction only if it meets the conditions in subsections (2) and (3).

(2) It must be effected—

(a) in the course of a trade or business and for its purposes, or

(b) with a view to setting up and commencing a trade or business and for its purposes.

(3) It must not—

(a) be on terms other than those that would have been made between persons not connected with each other dealing at arm's length, or

(b) be a transaction that would not have been entered into between such persons so dealing.

(4) For the purposes of subsection (2), making investments, managing them or making and managing them is a trade or business only so far as—

(a) the person by whom it is done, and

(b) the person for whom it is done,

are persons not connected with each other and are dealing at arm's length.

### **739 Exemption: all relevant transactions pre-5 December 2005 transactions**

(1) This section applies if all the relevant transactions are pre-5 December 2005 transactions.

(2) An individual is not liable for income tax under this Chapter for the tax year by reference to the relevant transactions if the individual satisfies an officer of Revenue and Customs that condition A or B is met.

(3) Condition A is that the purpose of avoiding liability to taxation was not the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.

(4) Condition B is that the transfer and any associated operations—

(a) were genuine commercial transactions, and

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- (b) were not designed for the purpose of avoiding liability to taxation.

**740 Exemption: relevant transactions include both pre-5 December 2005 and post-4 December 2005 transactions**

- (1) This section applies if the relevant transactions include both pre-5 December transactions and post-4 December transactions.
- (2) An individual is not liable to tax under this Chapter for the tax year by reference to the relevant transactions if—
  - (a) the condition in section 737(2) (exemption where all relevant transactions are post-4 December 2005 transactions) is met by reference to the post-4 December 2005 transactions, and
  - (b) the condition in section 739(2) (exemption where all relevant transactions are pre-5 December 2005 transactions) is met by reference to the pre-5 December transactions.
- (3) If subsection (2)(b) applies but subsection (2)(a) does not, this Chapter applies with the modifications in subsections (4) to (6).
- (4) For the purposes of sections 720 to 730, any income arising before 5 December 2005 must not be brought into account as income of the person abroad.
- (5) In determining the relevant income of an earlier tax year for the purposes of section 733(1) (see Step 4), it does not matter whether that year was a year for which the individual was not liable under section 731 because of section 739 or this section.
- (6) For the purposes of Step 1 in section 733(1), a benefit received by the individual in or before the tax year 2005-06 is to be left out of account.
- (7) But, in the case of a benefit received in the tax year 2005-06, subsection (6) applies only so far as, on a time apportionment basis, the benefit fell to be enjoyed in any part of the year that fell before 5 December 2005.

**741 Application of section 742 (partial exemption)**

- (1) Section 742 (partial exemption where later associated operations fail conditions) applies if—
  - (a) an individual is liable to tax because of section 720 or 727 for a tax year (the “taxable year”) because condition B in section 737(4) (genuine commercial transaction: post-4 December 2005 transactions) is not met, and
  - (b) subsections (2) and (3) apply.
- (2) This subsection applies if—
  - (a) since the relevant transfer there has been at least one tax year for which the individual was not so liable by reference to the relevant transactions effected before the end of the year, and
  - (b) the individual was not so liable for that year because—
    - (i) condition B in section 737(4) was met, or
    - (ii) condition B in section 739(4) (genuine commercial transaction: pre-5 December 2005 transactions) was met.
- (3) This subsection applies if the income by reference to which the individual is liable to tax for the taxable year is attributable—

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- (a) partly to relevant transactions by reference to which one of those conditions was met for the last exempt tax year, and
  - (b) partly to associated operations not falling within paragraph (a).
- (4) For the purposes of this section a tax year is exempt if—
  - (a) it is one of the tax years mentioned in subsection (2), and
  - (b) there is no earlier tax year for which the individual was liable to tax because of section 720 or 727 by reference to the relevant transactions or any of them.
- (5) References in this section to a person being liable to tax for a tax year because of section 720 or 727 include references to the individual being so liable had any income been treated as arising to the individual for that year under section 721 or 728.

#### **742 Partial exemption where later associated operations fail conditions**

- (1) If this section applies, the individual is liable to tax under this Chapter only in respect of part of the income for which the individual would otherwise be liable.
- (2) That part is so much of the income as appears to an officer of Revenue and Customs to be justly and reasonably attributable to the operations mentioned in section 741(3)
  - (b) in all the circumstances of the case.
- (3) Those circumstances include how far those operations or any of them directly or indirectly affect—
  - (a) the nature or amount of any person's income, or
  - (b) any person's power to enjoy any income.

#### *General*

#### **743 No duplication of charges**

- (1) No amount of income may be taken into account more than once in charging income tax under this Chapter.
- (2) If there is a choice about the persons in relation to whom any amount of income may be taken into account in charging income tax under this Chapter, it is to be taken into account—
  - (a) in relation to such one or more of them as appears to an officer of Revenue and Customs to be just and reasonable, and
  - (b) if more than one, in such respective proportions as appears to the officer to be just and reasonable.
- (3) For the meaning of references in subsections (1) and (2) to an amount of income taken into account in charging tax, see section 744.
- (4) If income treated as arising to an individual is charged to income tax under section 720 or 727 and the individual subsequently receives that income, it is treated as not being the individual's income again for income tax purposes.

#### **744 Meaning of taking income into account in charging income tax for section 743**

- (1) References in section 743(1) and (2) (no duplication of charges) to an amount of income taken into account in charging income tax are to be read as follows.

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- (2) In the case of tax charged on income under section 720 (charge where income enjoyed as a result of relevant transactions)—
  - (a) if section 724(1) (benefit provided out of income of person abroad) applies, they are references to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged, and
  - (b) otherwise they are references to the amount of income charged.
- (3) In the case of tax charged on income under section 727 (charge where capital sums received as a result of relevant transactions), they are references to the amount of that income.
- (4) In the case of tax charged under section 731 (charge to tax on income treated as arising to non-transferors where benefit received as a result of relevant transfers), they are references to the amount of relevant income taken into account under section 733 (income charged under section 731) in calculating the amount to be charged in respect of the benefit for the tax year in question.

#### **745 Rates of tax applicable to income charged under sections 720 and 727 etc**

- (1) Income tax at the basic rate, the savings rate or the dividend ordinary rate is not charged under section 720 or 727 in respect of any income so far as it has borne tax at that rate by deduction or otherwise.
- (2) Subsection (1) does not affect the tax charged if section 724(2) applies (benefit provided out of income of person abroad charged in year of receipt).
- (3) Subsection (4) applies to any income that—
  - (a) is treated as arising to an individual under section 721 or 728, and
  - (b) apart from this Chapter is dividend income,
 so far as subsection (1) does not apply to the income.
- (4) The charge to income tax under section 720 or, as the case may be, section 727 operates by treating the income as if it were income within section 19(2) (meaning of “dividend income”).

#### **746 Deductions and reliefs where individual charged under section 720 or 727**

- (1) This section applies for the purpose of calculating the liability to income tax of an individual charged under section 720 or 727.
- (2) The same deductions and reliefs are allowed as would have been allowed if the income treated as arising to the individual under section 721 or 728 had actually been received by the individual.

#### **747 Amounts corresponding to accrued income profits and related interest**

- (1) This subsection applies if a person—
  - (a) would have been treated as—
    - (i) making qualifying accrued income profits, or
    - (ii) making qualifying accrued income profits of a greater amount,
 in an interest period, but

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- (b) is not so treated because of being resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (2) If subsection (1) applies, this Chapter applies as if the amount which the person would be treated as making or, as the case may be, the additional amount were income becoming payable to the person.
- (3) Accordingly, any reference in this Chapter to income of (or payable or arising to) a person abroad must be read as including a reference to such an amount.
- (4) This subsection applies if income consisting of interest which falls due at the end of an interest period—
  - (a) would have been income as respects which a person is entitled to an exemption, or an exemption of a greater amount, from liability to income tax under section 679 (interest on securities involving accrued income losses: general), but
  - (b) is not such income because it is income of a person who is resident or domiciled outside the United Kingdom throughout any tax year in which the interest period (or part of it) falls.
- (5) If subsection (4) applies, for the purposes of this Chapter the interest is treated as reduced by the amount of the exemption or, as the case may be, the additional exemption.
- (6) In this section—
  - (a) expressions which are also used in Chapter 2 of Part 12 (accrued income profits) have the same meaning as in that Chapter (but see subsection (7)), and
  - (b) “qualifying accrued income profits” means accrued income profits which are treated as made—
    - (i) under section 628(5), or
    - (ii) under section 630(2) in respect of a transfer of variable rate securities.
- (7) In the case of qualifying accrued income profits within sub-paragraph (ii) of the definition of that expression in subsection (6)(b)—
  - (a) references in subsection (1)(a) to making qualifying accrued income profits in an interest period are to be read as making them in the tax year in which the settlement day falls, and
  - (b) the reference in subsection (1)(b) to the interest period is to the period—
    - (i) beginning with the day after the last day of the only or last interest period of the securities, and
    - (ii) ending with the settlement day.

### *Supplementary*

## **748 Power to obtain information**

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) The officer may direct the time within which the particulars must be provided and that time must be at least 30 days.

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- (3) The particulars which a person must provide under this section, if required to do so by a notice under subsection (1), include particulars about—
  - (a) transactions with respect to which the person is or was acting on behalf of others,
  - (b) transactions which in the opinion of the officer should properly be investigated for the purposes of this Chapter even though in the person's opinion no liability to income tax arises under this Chapter, and
  - (c) whether the person has taken or is taking any part and, if so, what part in transactions of a description specified in the notice.
- (4) A solicitor is not treated as having taken part in a transaction for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.
- (5) This section is subject to—
  - section 749 (restrictions on particulars to be provided by solicitors), and
  - section 750 (restrictions on particulars to be provided by banks).

#### **749 Restrictions on particulars to be provided by solicitors**

- (1) In relation to anything done by a solicitor on behalf of a client who does not consent to the information otherwise required from the solicitor under section 748 being provided, the solicitor may not be compelled under that section to do more than—
  - (a) state that the solicitor is or was acting on behalf of a client, and
  - (b) give the name and address of the client and any relevant person.
- (2) In the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual who is ordinarily UK resident to or by a body corporate to which subsection (6) applies, the transferor and the transferee are relevant persons.
- (3) In the case of anything done by the solicitor in connection with any associated operation in relation to any such transfer, the persons concerned in the associated operations are relevant persons.
- (4) In the case of anything done by the solicitor in connection with the formation or management of a body corporate to which subsection (6) applies, the body corporate is a relevant person.
- (5) In the case of anything done by the solicitor in connection with—
  - (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
  - (b) the execution of the trusts of any such settlement,the settlor and that person are relevant persons.
- (6) This subsection applies to bodies corporate resident or incorporated outside the United Kingdom which—
  - (a) are, or if UK resident would be, close companies, and
  - (b) are not companies whose business consists wholly or mainly of the carrying on of a trade or trades.
- (7) In this section “settlement” and “settlor” have the meanings given by section 620 of ITTOIA 2005.

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- (8) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

## **750 Restrictions on particulars to be provided by banks**

- (1) Section 748 does not oblige a bank to provide any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless subsection (2) or (3) applies.
- (2) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with—
- (a) the creation of any settlement as a result of which income becomes payable to a person abroad, or
  - (b) the execution of the trusts of any such settlement.
- (3) This subsection applies if the bank has acted or is acting on behalf of the customer in connection with the formation or management of a body corporate to which section 749(6) applies.
- (4) In this section—
- “bank” has the meaning given by section 991, and
  - “settlement” has the meaning given by section 620 of ITTOIA 2005.
- (5) In the application of this section to Scotland, any reference to the trusts of a settlement is a reference to the purposes of the settlement.

## **751 Special Commissioners' jurisdiction on appeals**

The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to affirm or replace any decision taken by an officer of Revenue and Customs in exercise of the officer's functions under—

- (a) section 737 (exemption: all relevant transactions post-4 December 2005 transactions),
- (b) section 738 (meaning of “commercial transaction”),
- (c) section 739 (exemption: all relevant transactions pre-5 December 2005 transactions),
- (d) section 742 (partial exemption where later associated operations fail conditions),
- (e) section 743(2) (no duplication of charges: choice of persons in relation to whom income is taken into account).

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## CHAPTER 3

### TRANSACTIONS IN LAND

#### *Introduction*

#### **752 Overview of Chapter**

- (1) This Chapter has effect for the purpose of preventing the avoidance of income tax by persons concerned with land or the development of land.
- (2) This Chapter imposes a charge to income tax in some circumstances where gains of a capital nature are obtained from disposing of land.

#### **753 Meaning of disposing of land**

- (1) For the purposes of this Chapter land is disposed of if the property in the land or control over the land is effectively disposed of—
  - (a) by one or more transactions, or
  - (b) by any arrangement or scheme.
- (2) It does not matter for the purposes of subsection (1) if the transactions, arrangement or scheme concern—
  - (a) the land, or
  - (b) property deriving its value from the land (see section 772(2)).
- (3) See also—
  - section 761 (transactions, arrangements, sales and realisations relevant for this Chapter), and
  - section 762 (tracing value).

#### **754 Priority of other income tax provisions**

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

#### *Charge on gains from transactions in land*

#### **755 Charge to tax on gains from transactions in land**

- (1) Income tax is charged on income treated as arising under section 756 (income treated as arising when gains obtained from some land disposals).
- (2) For exemptions from the charge, see—
  - section 765 (exemption: gain attributable to period before intention to develop formed),
  - section 766 (exemption: disposals of shares in companies holding land as trading stock), and



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section 767 (exemption: private residences).

## **756 Income treated as arising when gains obtained from some land disposals**

- (1) This section applies if—
  - (a) any of the conditions specified in subsection (3) is met as respects land,
  - (b) a gain of a capital nature is obtained from the disposal of all or part of the land,
  - (c) all or part of the land is situated in the United Kingdom, and
  - (d) a person within section 757(1)(a), (b) or (c) obtains the gain.
- (2) The gain is treated for income tax purposes as income arising when the gain is realised.
- (3) The conditions are that—
  - (a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  - (b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  - (c) the land is held as trading stock, and
  - (d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.
- (4) It does not matter for the purposes of this section whether the person within section 757(1)(a), (b) or (c) obtains the gain for that person or another person.
- (5) For the purposes of this section, if, for example by a premature sale, a person (“A”) directly or indirectly transmits the opportunity of realising a gain to another person (“B”), A obtains B's gain for B.
- (6) For the meaning of “another person”, see section 763.

## **757 Person obtaining gain**

- (1) The persons referred to in section 756(1)(d) are—
  - (a) the person acquiring, holding or developing the land,
  - (b) a person connected with a person within paragraph (a), and
  - (c) a person who is a party to, or concerned in, an arrangement or scheme within subsection (2).
- (2) An arrangement or scheme is within this subsection if—
  - (a) it is effected as respects all or part of the land, and
  - (b) it enables a gain to be realised—
    - (i) by any indirect method, or
    - (ii) by any series of transactions.
- (3) For the purposes of this section any number of transactions may be regarded as constituting a single arrangement or scheme if—
  - (a) a common purpose can be discerned in them, or
  - (b) there is other sufficient evidence of a common purpose.

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## **758 Income charged**

- (1) Tax is charged under this Chapter on the full amount of income treated as arising in the tax year.
- (2) See section 760 (method of calculating gain) for how to calculate the amount of income charged.

## **759 Person liable**

- (1) The person liable for any tax charged under this Chapter on income is the person whose income it is.
- (2) The general rule is that that person is the person who realises the gain.
- (3) But that rule is subject to subsections (4) and (6).
- (4) If all or any part of the gain accruing to a person (“A”) is derived from value provided directly or indirectly by another person (“B”), the income is B's.
- (5) Subsection (4) applies whether or not the value is put at the disposal of A.
- (6) If all or any part of the gain accruing to a person is derived from an opportunity of realising a gain provided directly or indirectly by another person, the income is the other person's.
- (7) For the meaning of “another person”, see section 763.
- (8) In applying section 1015 (territorial scope of charges including the charge under this Chapter) for the purposes of this Chapter, an amount treated as arising to a non-UK resident under section 756 is treated as being from a source in the United Kingdom so far (and only so far) as the land to which the disposal relates is in the United Kingdom.

## **760 Method of calculating gain**

- (1) Subsections (3) to (5) apply for calculating a gain for the purposes of this Chapter.
- (2) But, except so far as those subsections make provision, such method is to be used for those purposes as is just and reasonable in the circumstances.
- (3) The method must—
  - (a) take into account the value of what is obtained for disposing of the land, and
  - (b) allow only such expenses as are attributable to the land disposed of.
- (4) If a freehold is acquired and on disposal the reversion is retained, account may be taken of the way in which trading profits are calculated in such a case.
- (5) Account may be taken of the adjustments to be made in calculating trading profits under section 158 of ITTOIA 2005 (lease premiums etc: reduction of receipts).
- (6) In this section “trading profits” means the profits under Part 2 of ITTOIA 2005 (trading profits) of a person dealing in land.
- (7) In the application of this section in Scotland—

“freehold” means the interest of the owner, and

“reversion” means the interest of the landlord in property subject to a lease.

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(8) See also section 764 (valuations and apportionments).

*Further provisions relevant to the charge*

**761 Transactions, arrangements, sales and realisations relevant for Chapter**

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option affecting the disposition of any property or right and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent affecting such a disposition and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting such a disposition and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

**762 Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.
- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

**763 Meaning of “another person”**

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).

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- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being the trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

## **764 Valuations and apportionments**

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

### *Exemptions*

## **765 Exemption: gain attributable to period before intention to develop formed**

- (1) This section applies if—
  - (a) income is treated as arising because the condition mentioned in section 756(3) (d) is met (land developed with sole or main object of realising a gain from its disposal when developed), and
  - (b) part of the income is fairly attributable to a period before the intention to develop was formed.
- (2) No liability to income tax arises under this Chapter in respect of that part of the income.
- (3) In applying this section account must be taken of the treatment under Part 2 of ITTOIA 2005 (trading profits) of a person who appropriates land as trading stock.

## **766 Exemption: disposals of shares in companies holding land as trading stock**

- (1) No liability to income tax arises under this Chapter in respect of a gain on property deriving value from land if—
  - (a) the gain is obtained by the holder of shares,
  - (b) the gain arises as a result of the holder of shares falling within section 757(1) (a) or (b) (persons acquiring, holding or developing land and connected persons), and
  - (c) the circumstances are such as are mentioned in subsections (2) and (3).
- (2) The gain arises on a disposal of shares in—
  - (a) a company which holds that land as trading stock, or
  - (b) a company which directly or indirectly owns at least 90% of the ordinary share capital of another company which itself holds that land as trading stock.
- (3) All the land so held is disposed of—
  - (a) in the normal course of its trade by the company which holds it, and
  - (b) so as to procure that all opportunity of profit in respect of the land arises to that company.

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- (4) This section does not affect any liability as a result of any person falling within section 757(1)(c) (parties to arrangements and schemes, etc).

#### **767 Exemption: private residences**

No liability to income tax arises under this Chapter in respect of a gain accruing to an individual if—

- (a) the gain is exempt from capital gains tax as a result of sections 222 to 226 of TCGA 1992 (private residences), or
- (b) it would be so exempt but for section 224(3) of that Act (residences acquired partly with a view to making a gain).

#### *Recovery of tax*

#### **768 Recovery of tax where consideration receivable by person not assessed**

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “land income”) is treated as the highest part of the individual's total income.
- (7) But if in the tax year—
  - (a) more than one gain is treated as the individual's land income, or
  - (b) the individual is also treated as having income as a result of Chapter 4 (sales of occupation income),only a just and reasonable proportion of each gain treated as land income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
  - (a) the rules in subsections (6) and (7), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

#### **769 Recovery of tax: certificates of tax paid etc**

- (1) For the purposes of section 768(3), an officer of Revenue and Customs must, if required to do so, produce a certificate specifying—
  - (a) the amount of income in respect of which tax has been paid, and
  - (b) the amount of tax paid.

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- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be made under deduction of tax).

### *Clearances and power to obtain information*

#### **770 Clearance procedure**

- (1) This section applies if a person considers that the condition mentioned in section 756(3)(a), (b) or (d) may be met as respects a gain of a capital nature which that person—
  - (a) has obtained from the disposal of land, or
  - (b) would obtain from a proposed disposal of land.
- (2) The person may provide the Commissioners for Her Majesty's Revenue and Customs with written particulars showing how the gain has arisen or would arise.
- (3) The Commissioners must notify the person whether or not they are satisfied that, in the circumstances described in the particulars, the person will not, or would not, be liable to tax on the gain under this Chapter.
- (4) The notification must be given before the end of the period of 30 days beginning with the day after that on which the particulars are received.
- (5) A person notified by the Commissioners under this section that they are so satisfied is not liable to income tax on the gain under this Chapter.
- (6) A notification under this section about the Commissioners' decision concerning a gain is void if the particulars given under this section about the gain do not make a full and accurate disclosure of all facts and considerations relating to it which are material to the decision.

#### **771 Power to obtain information**

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
  - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
  - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person's opinion no liability to tax arises under this Chapter, and
  - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).

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- (5) In relation to anything done by a solicitor on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the solicitor may not be compelled under this section to do more than—
  - (a) state that the solicitor was acting on behalf of a client, and
  - (b) give the name and address of the client.
- (6) A solicitor is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.

### *Interpretation*

## **772 Interpretation of Chapter**

- (1) In this Chapter “capital”, in relation to a gain, means that the gain does not fall to be included in any calculation of income for [<sup>F116</sup>purposes of the Tax Acts otherwise than as a result of section 776 of ICTA or] this Chapter.
- (2) In this Chapter references to property deriving its value from land include—
  - (a) any shareholding in a company deriving its value directly or indirectly from land,
  - (b) any partnership interest deriving its value directly or indirectly from land,
  - (c) any interest in settled property deriving its value directly or indirectly from land, and
  - (d) any option, consent or embargo affecting the disposition of land.
- (3) In this Chapter—
  - “company” includes any body corporate, and
  - “share” includes stock.

### **Textual Amendments**

**F116** Words in s. 772(1) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), **art. 4(4)**

## **CHAPTER 4**

### **SALES OF OCCUPATION INCOME**

### *Introduction*

## **773 Overview of Chapter**

- (1) This Chapter imposes a charge to income tax—
  - (a) on individuals to whom income is treated as arising under section 778 (income arising where capital amount other than derivative property or right obtained), and

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- (b) on individuals to whom income is treated as arising under section 779 (income arising where derivative property or right obtained).
- (2) Income is treated as arising under those sections only if—
  - (a) transactions are effected or arrangements made to exploit the earning capacity of an individual in an occupation, and
  - (b) the main object or one of the main objects of the transactions or arrangements is the avoidance or reduction of liability to income tax.

#### **774 Meaning of “occupation”**

In this Chapter references to an occupation, in relation to an individual, are references to any activities of a kind undertaken in a profession or vocation, regardless of whether the individual—

- (a) is carrying on a profession or vocation on the individual's own account, or
- (b) is an employee or office-holder.

#### **775 Priority of other tax provisions**

This Chapter has effect subject to—

- (a) Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor), and
- (b) any other provision of the Tax Acts treating income as belonging to a particular person.

### *Charge on sale of occupation income*

#### **776 Charge to tax on sale of occupation income**

- (1) Income tax is charged on income treated as arising under—
  - (a) section 778 (income arising where capital amount other than derivative property or right obtained), or
  - (b) section 779 (income arising where derivative property or right obtained).
- (2) Tax is charged under this section on the full amount of income treated as arising in the tax year.
- (3) The person liable for any tax charged under this section is the individual to whom the income is treated as arising.
- (4) This section is subject to section 784 (exemption for sales of going concerns).

#### **777 Conditions for sections 778 and 779 to apply**

- (1) Sections 778 and 779 apply only if conditions A to C are met in respect of an individual.
- (2) Condition A is that the individual carries on an occupation wholly or partly in the United Kingdom.



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- (3) Condition B is that transactions are effected or arrangements made to exploit the individual's earning capacity in the occupation by putting another person (see section 782) in a position to enjoy—
  - (a) all or part of the income or receipts derived from the individual's activities in the occupation, or
  - (b) anything derived directly or indirectly from such income or receipts.
- (4) The reference in subsection (3) to income or receipts derived from the individual's activities includes a reference to payments for any description of copyright or licence or franchise or other right deriving its value from the individual's activities (including past activities).
- (5) Condition C is that as part of, or in connection with, or in consequence of, the transactions or arrangements a capital amount is obtained by the individual for the individual or another person.
- (6) For the purposes of subsection (5), the cases where an individual (“A”) obtains a capital amount for another person (“B”) include cases where A has put B in a position to receive the capital amount by providing B with something of value derived, directly or indirectly, from A's activities in the occupation.
- (7) In this Chapter “capital amount” means an amount in money or money's worth which does not fall to be included in a calculation of income for <sup>F117</sup>purposes of the Tax Acts otherwise than as a result of] this Chapter.

#### Textual Amendments

**F117** Words in s. 777(7) substituted (retrospective with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2009 \(S.I. 2009/2859\)](#), [art. 4\(5\)](#)

### **778 Income arising where capital amount other than derivative property or right obtained**

- (1) This section applies if the capital amount obtained as mentioned in section 777(5) does not consist of—
  - (a) property which derives substantially the whole of its value from the individual's activities, or
  - (b) a right which does so.
- (2) The capital amount is treated for income tax purposes as income arising to the individual.
- (3) The income is treated as arising in the tax year in which the capital amount is receivable.
- (4) A capital amount is not regarded as having become receivable by a person for the purposes of this section until the person can effectively enjoy or dispose of it.

### **779 Income arising where derivative property or right obtained**

- (1) This section applies if—
  - (a) the capital amount obtained as mentioned in section 777(5) consists of—

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- (i) property which derives substantially the whole of its value from the activities of an individual, or
- (ii) a right which does so, and
- (b) the property or right is sold or otherwise realised.
- (2) For the purposes of subsection (1), it does not matter whether the capital amount is obtained on one occasion or on two or more occasions (for example, because the individual acquires a stock option and subsequently exercises it).
- (3) Income of an amount equal to the proceeds of sale or the realised value is treated for income tax purposes as income arising to the individual.
- (4) The income is treated as arising in the tax year in which the property or right is sold or otherwise realised.

*Further provisions relevant to the charge*

## **780 Transactions, arrangements, sales and realisations relevant for Chapter**

- (1) For the purposes of this Chapter, account is to be taken of any method, however indirect, by which—
  - (a) any property or right is transferred or transmitted, or
  - (b) the value of any property or right is enhanced or diminished.
- (2) Accordingly—
  - (a) the occasion of the transfer or transmission of any property or right however indirect, and
  - (b) the occasion when the value of any property or right is enhanced, may be an occasion when tax is charged under this Chapter.
- (3) Subsections (1) and (2) apply in particular—
  - (a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,
  - (b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning—
    - (i) share capital or other rights in a company,
    - (ii) rights in a partnership, or
    - (iii) an interest in settled property,
  - (c) to the creation of an option and the giving of consideration for granting it,
  - (d) to the creation of a requirement for consent and the giving of consideration for granting it,
  - (e) to the creation of an embargo affecting the disposition of any property or right and the giving of consideration for releasing it, and
  - (f) to the disposal of any property or right on the winding up, dissolution or termination of a company, partnership or trust.

## **781 Tracing value**

- (1) This section applies if it is necessary to determine the extent to which the value of any property or right is derived from any other property or right for the purposes of this Chapter.

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- (2) Value may be traced through any number of companies, partnerships and trusts.
- (3) The property held by a company, partnership or trust must be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

## **782 Meaning of “other person”**

- (1) For the purposes of this Chapter references to other persons are to be read in accordance with subsections (2) to (4).
- (2) A partnership or partners in a partnership may be regarded as a person or persons distinct from the individuals or other persons who are for the time being partners.
- (3) The trustees of settled property may be regarded as persons distinct from the individuals or other persons who are for the time being trustees.
- (4) Personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being personal representatives.

## **783 Valuations and apportionments**

- (1) All such valuations are to be made as are appropriate to give effect to this Chapter.
- (2) For the purposes of this Chapter, any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances.

### *Exemption for sales of going concerns*

## **784 Exemption for sales of going concerns**

- (1) This section applies if a capital amount is obtained from the disposal—
  - (a) of assets (including any goodwill) of a profession or vocation,
  - (b) of a share in a partnership which is carrying on a profession or vocation, or
  - (c) of shares in a company.
- (2) An individual is not liable to income tax under this Chapter in respect of the capital amount so far as the going concern condition is met (see subsections (4) and (5)).
- (3) Subsection (2) is subject to section 785 (restriction on exemption: sales of future earnings).
- (4) In the case of a disposal within subsection (1)(a) or (b), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the profession or vocation as a going concern.
- (5) In the case of a disposal within subsection (1)(c), the going concern condition is that the value of what is disposed of at the time of disposal is attributable to the value of the company's business as a going concern.
- (6) In subsection (5) the reference to the company's business includes a reference to the business of any other company in which it holds shares directly or indirectly.

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## **785 Restriction on exemption: sales of future earnings**

- (1) This section applies if the value as a going concern mentioned in section 784(4) or (5) is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation.
- (2) The exemption under section 784 applies to the value so derived only if the future earnings condition is met.
- (3) The future earnings condition is met if, ignoring all capital amounts, the individual will receive full consideration for the prospective income or receipts, whether as a partner in a partnership or as an employee or otherwise.
- (4) The references in subsections (1) and (3) to income or receipts include references to payments for any description of copyright, licence, franchise or other right deriving its value from the individual's activities (including past activities).

### *Recovery of tax*

## **786 Recovery of tax where consideration receivable by person not assessed**

- (1) This section applies if a person (“A”) is assessed to tax under this Chapter in respect of consideration receivable by another person (“B”).
- (2) Consideration is not regarded as having become receivable by B for this purpose until B can effectively enjoy or dispose of it.
- (3) A is entitled to recover from B any part of the tax which A has paid.
- (4) If any part of the tax remains unpaid at the end of the period of 6 months beginning with the date when it became due and payable, it is recoverable from B as if B were the person assessed.
- (5) Subsection (4) does not affect the right to recover the tax from A.
- (6) For the purposes of this section, any income which an individual is treated as having as a result of this Chapter (the “occupation income”) is treated as the highest part of the individual's total income.
- (7) But if in the tax year—
  - (a) more than one capital amount is treated as the individual's occupation income, or
  - (b) the individual is also treated as having income as a result of Chapter 3 (transactions in land),
 only a just and reasonable proportion of each capital amount treated as occupation income is to be treated as the highest part of the individual's total income.
- (8) See section 1012 for the relationship between—
  - (a) the rules in subsections (6) and (7), and
  - (b) other rules requiring particular income to be treated as the highest part of a person's total income.

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## **787 Recovery of tax: certificates of tax paid etc**

- (1) For the purposes of section 786(3), an officer of Revenue and Customs must, if requested to do so, produce a certificate specifying—
  - (a) the amount of income in respect of which tax has been paid, and
  - (b) the amount of tax paid.
- (2) The certificate is conclusive evidence of any facts stated in it.
- (3) See also section 944 (under which directions may be given for payments within this Chapter to non-UK residents to be subject to a duty to deduct income tax).

### *Power to obtain information*

## **788 Power to obtain information**

- (1) An officer of Revenue and Customs may by notice require any person to provide the officer within such period as the officer may direct with such particulars as the officer may reasonably require for the purposes of this Chapter.
- (2) That period must be at least 30 days.
- (3) The particulars which a person must provide under this section, if required to do so by such a notice, include particulars about—
  - (a) transactions or arrangements with respect to which the person is or was acting on behalf of others,
  - (b) transactions or arrangements which in the opinion of the officer should properly be investigated for the purposes of this Chapter, although in the person's opinion no liability to tax arises under this Chapter, and
  - (c) whether the person has taken or is taking any part and, if so, what part in transactions or arrangements of a description specified in the notice.
- (4) Subsection (3) is subject to subsection (5).
- (5) In relation to anything done by a solicitor on behalf of a client who does not consent to the provision of information required to be provided by a notice under subsection (1), the solicitor may not be compelled under this section to do more than—
  - (a) state that the solicitor was acting on behalf of a client, and
  - (b) give the name and address of the client.
- (6) A solicitor is not treated as having taken part in a transaction or arrangement for the purposes of subsection (3)(c) merely because of giving professional advice to a client about it.

### *Interpretation*

## **789 Minor definitions**

In this Chapter—

- “company” includes any body corporate, and
- “share” includes stock.

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## CHAPTER 5

### AVOIDANCE INVOLVING TRADING LOSSES

#### *Introduction*

#### **790 Overview of Chapter**

- (1) This Chapter imposes charges to income tax on—
  - (a) individuals who are treated as receiving income under section 792 (individuals in partnership claiming excess relief),
  - (b) individuals who are treated as receiving income under section 797 (individuals claiming relief for film-related trading losses), and
  - (c) individuals who are treated as receiving income under section 805 (individuals in partnership claiming relief for licence-related trading losses).
- (2) The charges apply if (among other things) the individual makes a loss in a trade for which the individual claims sideways relief or capital gains relief.
- (3) For the purposes of this Chapter sideways relief is—
  - (a) trade loss relief against general income (see sections 64 to 70), or
  - (b) early trade losses relief (see sections 72 to 74).
- (4) For the purposes of this Chapter—
  - (a) capital gains relief is, in relation to a loss, the treatment of the loss as an allowable loss by virtue of section 261B of TCGA 1992 (use of trading loss as a CGT loss), and
  - (b) capital gains relief is claimed for a loss when a claim under that section is made in relation to the loss.
- (5) References in this Chapter to a firm are to be read in the same way as references to a firm in Part 9 of ITTOIA 2005 (which contains special provision about partnerships).

*Individuals in partnership: recovery of excess relief*

#### **791 Charge to tax on income treated as received under section 792**

- (1) Income tax is charged on income treated as received by an individual under section 792.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

#### **792 Partners claiming excess sideways or capital gains relief**

- (1) This section applies if—
  - (a) an individual carrying on a trade (“the relevant trade”) as a partner in a firm makes post-1 December 2004 losses in the relevant trade for which the individual claims relief within subsection (2),

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- (b) any of sections 104, 107 and 110 applies in relation to the relief (whether or not any of those sections restricts the amount of the relief), and
  - (c) after the individual makes the claim or claims, a chargeable event occurs.
- (2) The relief within this subsection is—
  - (a) sideways relief but only if the whole or part of the relief is claimed against income of the individual apart from profits of the relevant trade, and
  - (b) capital gains relief.
- (3) A chargeable event occurs whenever—
  - (a) the amount of the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114, and
  - (b) that reduction in the individual's contribution to the firm immediately results in—
    - (i) the total amount of trade losses claimed (less any reclaimed relief) becoming greater than the contribution, or
    - (ii) an increase in the amount by which the total amount of trade losses claimed (less any reclaimed relief) exceeds the contribution.
- (4) The individual is treated as receiving an amount of income every time a chargeable event occurs.

The income is treated as arising otherwise than as profits of a trade.

- (5) The amount of the income is calculated in accordance with section 793.
- (6) If—
  - (a) the firm is carrying on, or has carried on, more than one trade, and
  - (b) subsection (1)(a) and (b) applies in relation to losses made by the individual in one or more of those trades as a partner in the firm,the firm's trades are taken together for the purpose of determining whether a chargeable event occurs at any time after a claim in relation to any of those losses has been made and, if one does occur, the amount of income treated as received by the individual at that time.

See section 794(6) for modifications giving effect to this.

- (7) References in this section to an individual being a partner in a firm include a reference to an individual being a limited partner within the meaning of section [F118103A] as a result of subsection (1)(c) of that section.
- (8) And, accordingly, in the case of an individual who is such a limited partner, in this section and in sections 793 to 795 references to the individual's firm are references to the relationship between the individual and the other persons mentioned in section [F119103A(3)(a)].

#### Textual Amendments

**F118** Word in s. 792(7) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 17\(a\), 21](#)

**F119** Word in s. 792(8) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 17\(b\), 21](#)

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### **793 Calculating the amount of income treated as received**

- (1) The amount of income treated as received by the individual under section 792 when the chargeable event occurs is the lowest of amounts A to C.
- (2) Amount A is the amount by which the individual's contribution to the firm is reduced as a result of the application of regulations made under section 114.
- (3) Amount B is the amount given by—
  - (a) taking, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed that are post-1 December 2004 losses, and
  - (b) reducing that amount (but not below nil) by any reclaimed relief.
- (4) Amount C is the amount given by—
  - (a) taking the amount by which, at the time immediately after the chargeable event occurs, the total amount of trade losses claimed exceeds the individual's contribution to the firm, and
  - (b) reducing that amount (but not below nil) by any reclaimed relief.

### **794 Meaning of “the total amount of trade losses claimed” etc**

- (1) In sections 792 and 793 “the total amount of trade losses claimed” means the total amount of losses within subsection (2) for which the individual has claimed sideways relief or capital gains relief.
- (2) The losses within this subsection are losses made by the individual in the relevant trade—
  - (a) in a tax year at a time during which the individual carries on the relevant trade as a limited partner or as a member of an LLP, or
  - (b) in an early tax year during which the individual carries on the relevant trade as a non-active partner.

Expressions used in this subsection are to be read as if contained in Chapter 3 of Part 4.

- (3) In sections 792 and 793 “reclaimed relief” means the total amount of income treated as received by the individual under section 792 as a result of that section being previously applied in relation to claims for relief for losses made by the individual in the relevant trade.
- (4) In sections 792 and 793 “the individual's contribution to the firm” at any time means the individual's contribution to the firm or the LLP (as the case may be) at that time as calculated for the purposes of the relevant restriction provision.
- (5) The “relevant restriction provision” means—
  - (a) whichever of sections 104, 107 and 110 applied as mentioned in section 792(1)(b), or
  - (b) if more than one of those sections applied as mentioned in section 792(1)(b), the section which so applied to the amount of relief which could be given for the loss most recently made by the individual in the relevant trade.
- (6) In a case to which section 792(6) applies, for the purpose of determining the total amount of trade losses claimed, the amount of the reclaimed relief and the relevant restriction provision—



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- (a) apply subsections (1) and (2) in relation to each of the trades that the firm is carrying on, or has carried on, and then add the results together, and
- (b) apply subsections (3) and (5)(b) as if references to the relevant trade were references to any of the trades that the firm is carrying on, or has carried on.

But if a trade is of the kind mentioned in section 110(8), do not apply subsection (2)(b) in relation to it.

## **795 Meaning of “post-1 December 2004 loss”**

- (1) For the purposes of sections 792 and 793 a “post-1 December 2004 loss” means—
  - (a) any loss made by an individual in a trade in a tax year the basis period for which begins on or after 2 December 2004, or
  - (b) the post-1 December 2004 part of any loss made by an individual in a trade in a tax year the basis period for which includes 2 December 2004 (but begins before that date).
- (2) The “post-1 December 2004 part” of any loss made by an individual in a trade means the individual's share of any losses made by the relevant firm in the trade in the period—
  - (a) beginning with 2 December 2004, and
  - (b) ending with the end of the basis period for the tax year concerned.
- (3) For this purpose “the relevant firm” means the firm in which the individual carried on the trade, and—
  - (a) the losses of that firm are calculated as if that period were one for which profits and losses had to be calculated for the purposes of section 849 of ITTOIA 2005 (calculation of firm's profits or losses), and
  - (b) the individual's share of the losses is determined in accordance with the individual's interest in the firm during that period.
- (4) In this section “basis period”, in relation to an individual with a notional trade, means the basis period for the notional trade (within the meaning of Part 9 of ITTOIA 2005).

*Individuals claiming relief for film-related trading losses*

## **796 Charge to tax on income treated as received under section 797**

- (1) Income tax is charged on income treated as received by an individual under section 797.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

## **797 Individuals claiming sideways or capital gains relief for film-related losses**

- (1) This section applies if—

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- (a) an individual makes a film-related loss (see section 800) in a trade for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
  - (b) there is a disposal of a right of the individual to profits arising from the trade (a “relevant disposal”) (see section 799), and
  - (c) an exit event occurs.
- (2) An exit event occurs whenever—
- (a) the individual receives any non-taxable consideration (see section 798) for a relevant disposal, or
  - (b) an increase in the individual's claimed film-related losses (see section 800) or a decrease in the individual's capital contribution (see section 801) results in—
    - (i) those losses becoming greater than that contribution, or
    - (ii) an increase in the amount by which those losses exceed that contribution.
- (3) The individual is treated as receiving an amount of income every time a chargeable event occurs.
- The income is treated as arising otherwise than as profits of the trade.
- (4) A chargeable event occurs whenever—
- (a) the individual makes a relevant claim (if by that time a relevant disposal and an exit event have occurred),
  - (b) a relevant disposal occurs (if by that time an exit event has occurred and the individual has made a relevant claim), or
  - (c) an exit event occurs (if by that time a relevant disposal has occurred and the individual has made a relevant claim).
- (5) The amount of income treated as received when a chargeable event occurs is equal to the sum of—
- (a) the total amount or value of all non-taxable consideration received by the individual for relevant disposals, and
  - (b) the amount (if any) by which the individual's claimed film-related losses exceed the individual's capital contribution.
- The calculation in this subsection is made immediately after the chargeable event occurs and is subject to section 803.
- (6) For the purposes of this section it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs, or
  - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal.

## 798 Meaning of “non-taxable consideration” etc

- (1) This section applies for the purposes of section 797.
- (2) Consideration is non-taxable if (apart from section 796) it is not chargeable to income tax.

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- (3) Non-taxable consideration from which a deduction within subsection (4) is made is treated as received free of the deduction.
- (4) A deduction is within this subsection if it is in consideration of any person's agreeing to, or facilitating, any relevant disposal or exit event.

## **799 Meaning of “disposal of a right of the individual to profits” etc**

- (1) For the purposes of section 797 any reference to a disposal of a right of an individual to profits arising from a trade includes, in particular, any of events A to D.
- (2) Event A is the disposal, giving up or loss by—
  - (a) the individual, or
  - (b) a firm in which the individual is a partner,of a right arising from the trade to income (or any part of any income).

It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.
- (3) Event B is the disposal, giving up or loss of the individual's interest in a firm that carries on the trade (including the dissolution of the firm).
- (4) Event C is a default in the payment of income to which—
  - (a) the individual, or
  - (b) a firm in which the individual is a partner,has a right arising from the trade.
- (5) Event D is a change in the individual's entitlement to any profits or losses arising from the trade the effect of which is that—
  - (a) the individual's share of any profits is reduced (including to nil), or
  - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (6) The changes covered by event D include cases where 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 (including a nil share), and
  - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (7) In such cases the change in the individual's entitlement is treated for the purposes of section 797 as occurring at the beginning of the succeeding period.

## **800 Meaning of “film-related losses” etc**

- (1) This section applies for the purposes of sections 797, 801 and 802.
- (2) A loss is a “film-related loss” if the calculation of profits or losses that it results from is made in accordance with any provision of Chapter 9 of Part 2 of ITTOIA 2005.
- (3) “The individual's claimed film-related losses” means—
  - (a) the total amount of film-related losses made by the individual in the trade so far as they are losses for which the individual has made a relevant claim, less

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- (b) the amount of any relevant recovered relief.
- (4) “The amount of any relevant recovered relief” means—
  - (a) amount A, or
  - (b) if less, amount B.
- (5) Amount A is the total amount of income treated as received by the individual under section 792 (recovery of excess relief) as a result of the application of that section in relation to claims for relief for losses made by the individual in the trade.
- (6) Amount B is the total amount of film-related losses within subsection (7) for which the individual has made a relevant claim.
- (7) A loss is within this subsection if it is made by the individual in the trade—
  - (a) in a tax year at a time during which the individual carries on the trade as a member of an LLP or as a limited partner, or
  - (b) in an early tax year during which the individual carries on the trade as a non-active partner.
- (8) Expressions used in subsection (7) are to be read as if contained in Chapter 3 of Part 4.
- (9) Subsection (10) applies if—
  - (a) the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, and
  - (b) the firm is carrying on, or has carried on, more than one trade.
- (10) For the purpose of determining the individual's claimed film-related losses—
  - (a) apply subsection (3)(a) in relation to each of the trades and then add the results together,
  - (b) apply subsection (5) as if the reference to the trade were a reference to any of the trades, and
  - (c) apply subsections (6) and (7) in relation to each of the trades and then add the results together.

## 801 Meaning of “capital contribution”

- (1) This section applies for the purposes of section 797.
- (2) The individual's capital contribution is the amount which the individual has contributed to the trade as capital less so much of that amount (if any) as is within subsection (6).  
  
 This is subject to subsection (3).
- (3) If the individual has made a relevant claim for a film-related loss made in the trade as a partner in a firm, the individual's capital contribution is the amount which the individual has contributed to the firm as capital less so much of that amount (if any) as is within subsection (6).
- (4) In particular, the individual's share of any profits of the firm is to be included for the purposes of subsection (3) in the amount which the individual has contributed to the firm as capital so far as that share has been added to the firm's capital.

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- (5) In subsection (4) the reference to profits are to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for income tax purposes).
- (6) An amount of capital is within this subsection if it is an amount which—
  - (a) the individual has previously drawn out or received back,
  - (b) the individual is entitled to draw out or receive back,
  - (c) another person has reimbursed to the individual, or
  - (d) the individual is entitled to require another person to reimburse to the individual.
- (7) But if a chargeable event occurs, anything treated for the purposes of section 797(5)(a) as consideration received by the individual for a relevant disposal is not to be treated as capital within subsection (6) in calculating the individual's capital contribution for the purposes of section 797(5)(b).
- (8) In this section—
  - (a) any reference to drawing out, receiving back or reimbursing an amount is to doing so directly or indirectly,
  - (b) any reference to drawing out or receiving back an amount does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to income tax as profits of a trade, and
  - (c) any reference to reimbursing an amount includes discharging or assuming all or part of a liability of the individual,but the express provision made by paragraph (c) does not affect what counts as the receipt back or reimbursement of an amount.
- (9) This section needs to be read with any regulations made under section 802 (specified amounts to be excluded in calculating a partner's capital contribution for the purposes of section 797).

## **802 Exclusion of amounts in calculating capital contribution by a partner**

- (1) This section applies if an individual makes a relevant claim for a firm-related loss made by the individual in a trade as a partner in a firm.
- (2) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that any amount of a specified description is to be excluded in calculating the individual's capital contribution for the purposes of section 797.
- (3) “Specified” means specified in the regulations.
- (4) The regulations may—
  - (a) make provision having retrospective effect,
  - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) make different provision for different cases or purposes.
- (5) The provision which may be made as a result of subsection (4)(b) includes provision amending or repealing any provision of an Act passed before FA 2005.
- (6) No regulations may be made under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

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### **803 Prohibition against double counting**

- (1) Subsections (2) and (3) apply for the purpose of calculating the amount of income received under section 797 on a chargeable event in respect of the individual and the trade.
- (2) If chargeable events have previously occurred in respect of the individual and the trade, any consideration taken into account in calculating the amount of income received on an earlier chargeable event is left out of account.
- (3) If chargeable events have previously occurred in respect of the individual and the trade, the amount of income received as a result of section 797(5)(b) is reduced (but not below nil) by the total amount of income received on earlier chargeable events as a result of that provision.
- (4) In a case to which section 800(10) (cases in which firm is carrying on, or has carried on, more than one trade) applies—
  - (a) subsections (2) and (3) of this section have effect as if references to the trade were references to any of the firm's trades, and
  - (b) if chargeable events in respect of the individual and any of the firm's trades occur at the same time, to find the total amount of income received under section 797 at that time on those chargeable events—
    - (i) calculate separately the income received on each chargeable event ignoring the other chargeable events,
    - (ii) add the results from sub-paragraph (i) together, and
    - (iii) reduce the total amount of income resulting from sub-paragraph (ii) so far as necessary to ensure that no amount is included more than once in that total.

*Individuals in partnership claiming relief for licence-related trading losses*

### **804 Charge to tax on income treated as received under section 805**

- (1) Income tax is charged on income treated as received by an individual under section 805.
- (2) Tax is charged under this section on the amount of the income treated as received in the tax year.
- (3) The person liable for any tax charged under this section is the individual treated as receiving the income.

### **805 Partners claiming relief for licence-related trading losses**

- (1) This section applies if—
  - (a) an individual carries on a trade as a non-active partner during an early tax year,
  - (b) the individual makes a loss in the trade in that tax year for which the individual claims sideways relief or capital gains relief (a “relevant claim”),
  - (c) the loss derives to any extent from expenditure incurred in the trade in exploiting a licence acquired in carrying on the trade, and
  - (d) there is a relevant disposal of the licence.

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- (2) For the purposes of this section and section 806 there is a relevant disposal of the licence whenever the individual receives non-taxable consideration for—
- (a) a disposal of the licence, or
  - (b) a disposal of a right to income under an agreement related to or containing the licence.
- (3) If one or more chargeable events occur in any tax year, the individual is treated as receiving an amount of income in the tax year.
- The income is treated as arising otherwise than as profits of the trade.
- (4) For the purposes of this section and section 806 a chargeable event occurs whenever—
- (a) there is a relevant disposal of the licence (if by that time the individual has made a relevant claim), or
  - (b) the individual makes a relevant claim (if by that time there has been a relevant disposal of the licence).
- (5) For the purposes of this section and section 806 consideration is non-taxable if—
- (a) (apart from section 804) it is not chargeable to income tax, and
  - (b) its receipt is not an exit event for the purposes of section 797.
- (6) For the purposes of this section and section 806 it does not matter—
- (a) if the individual (or anyone else) is still carrying on the trade when a chargeable event occurs,
  - (b) if the individual receives both non-taxable and taxable consideration for a relevant disposal of the licence, or
  - (c) if a relevant disposal of the licence is part of a larger disposal.

## **806 Calculation of amount of income treated as received by the individual**

The amount of income treated under section 805 as received by the individual in the tax year is calculated by taking the following steps. *Step 1*

Calculate, at the end of the tax year, the total amount of the claimed losses (so far as relating to the licence) made by the individual in the trade in any early tax year during which the individual carried on the trade as a non-active partner.

### *Step 2*

Calculate, at the end of the tax year, the total amount of the profits (so far as relating to the licence) made by the individual in the trade in any tax year.

### *Step 3*

Deduct the total calculated at Step 2 from the total calculated at Step 1.

The result is “the net licence-related loss”.

If the net licence-related loss is nil or a negative figure—

- (a) the income treated as received in the tax year is nil, and
- (b) ignore Steps 4 and 5.

### *Step 4*

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Calculate, at the end of the tax year, the total amount or value of all non-taxable consideration received by the individual for relevant disposals (including consideration received in previous tax years).

*Step 5*

Deduct from—

- (a) the net licence-related loss, or
- (b) if less, the total calculated at Step 4,

the total amount of all income treated under section 805 as received by the individual in previous tax years as a result of chargeable events.

The result is the amount of the income treated as received in the tax year.

(If the result is a negative figure, the income is nil.)

### **807 Supplementary provision relating to calculation in section 806**

- (1) This section applies for the purposes of section 806.
- (2) For the purposes of Step 1, the amount of a loss made in a tax year that relates to the licence is so much of the loss in the tax year as derives from expenditure incurred in the trade in exploiting the licence.
- (3) The amount of the loss that derives from such expenditure is determined on a just and reasonable basis.
- (4) For the purposes of Step 1, a loss is a claimed loss if the individual has claimed sideways relief or capital gains relief for the loss.
- (5) For the purposes of Step 2, the amount of profits made in a tax year that relates to the licence is so much of the individual's profits from the trade in the tax year as derives from income arising from an agreement related to or containing the licence.
- (6) The amount of the profits that derives from such income is determined on a just and reasonable basis.

### **808 Meaning of “disposal of the licence” etc**

- (1) For the purposes of section 805 any reference to—
  - (a) a disposal of a licence acquired in carrying on a trade, or
  - (b) a disposal of a right to income under an agreement related to or containing a licence acquired in carrying on a trade (“a licence-related agreement”),
 includes, in particular, any of events A to E.
- (2) Event A is the revocation of the licence.
- (3) Event B is the disposal, giving up or loss of—
  - (a) a right under the licence, or
  - (b) a right to income (or any part of any income) under a licence-related agreement,
 by the individual or by a firm in which the individual is a partner.



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It does not matter if the right is disposed of, given up or lost as part of a larger disposal, giving up or loss.

- (4) Event C is the disposal, giving up or loss of the individual's interest in a firm that has the licence or a right to income under a licence-related agreement (including the dissolution of the firm).
- (5) Event D is a default in the payment of income to which—
  - (a) the individual, or
  - (b) a firm in which the individual is a partner,has a right under a licence-related agreement.
- (6) Event E is a change in the individual's entitlement to any profits or losses relating to the licence the effect of which is that—
  - (a) the individual's share of any profits is reduced (including to nil), or
  - (b) the individual becomes entitled to a share, or a greater share, of any losses without becoming entitled to a corresponding share of profits.
- (7) The changes covered by event E include cases where there is an agreement under which the individual is entitled—
  - (a) to a particular share of any profits or losses relating to the licence in a period (including a nil share), and
  - (b) to a different share of any such profits or losses in a succeeding period (including a nil share).
- (8) In such cases the change in the individual's entitlement is treated for the purposes of section 805 as occurring at the beginning of the succeeding period.
- (9) For the purposes of this section—
  - (a) references to any profits relating to the licence are to any profits deriving to any extent from income to which the individual has a right under a licence-related agreement, and
  - (b) references to any losses relating to the licence are to losses deriving to any extent from expenditure incurred in exploiting the licence.

## **809 Other definitions**

- (1) References in sections 805 and 806 to an individual carrying on a trade as a non-active partner in an early tax year are to be read as if those sections were contained in Chapter 3 of Part 4 (see, in particular, section [F120]103B).
- (2) But for that purpose, section [F121]103B(1)(b)] (which contains a requirement that the individual does not carry on the trade as a limited partner at any time during the tax year) is treated as if it were omitted.
- (3) For the purposes of sections 805 to 808 an agreement is related to a licence if the agreement and licence are entered into under the same arrangement (regardless of when the agreement or licence is entered into).
- (4) For the purposes of sections 805 to 808 an agreement, or part of an agreement, is not prevented from being a licence merely because it imposes an obligation to do a thing (rather than merely gives authority to do it).

References to exploiting a licence are to be read in that light.

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### Textual Amendments

- F120** Word in s. 809(1) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(a\)](#), 21
- F121** Word in s. 809(2) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 4 paras. 18\(b\)](#), 21

## PART 14

### INCOME TAX LIABILITY: MISCELLANEOUS RULES

## CHAPTER 1

### LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

#### *Introduction*

### 810 Overview of Chapter

- (1) This Chapter provides for limits on the liability to income tax of non-UK residents.
- (2) See sections 811 to 814 in the cases of—
  - (a) a non-UK resident, other than a company, and
  - (b) a non-UK resident company liable as a trustee.
- (3) See sections 815 and 816 in the case of a non-UK resident company which is liable otherwise than as a trustee.

#### *Limit for non-UK resident individuals, trustees etc*

### 811 Limit on liability to income tax of non-UK residents

- (1) This section applies to income tax to which—
  - (a) a non-UK resident, other than a company, is liable, or
  - (b) a non-UK resident company is liable as a trustee.
- (2) Subsection (1) is subject to section 812 (case where limit not to apply).
- (3) The non-UK resident's liability to income tax for a tax year is limited to the sum of amounts A and B.
- (4) Amount A is the sum of—
  - (a) any sums representing income tax deducted from the non-UK resident's disregarded income for the tax year (see section 813),
  - (b) any sums representing income tax that are treated as deducted from or paid in respect of that income, and
  - (c) any tax credits in respect of that income.

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- (5) Amount B is the amount that, apart from this section, would be the non-UK resident's liability to income tax for the tax year, if the following were left out of account—
- (a) the non-UK resident's disregarded income for the tax year, and
  - (b) any relief mentioned in subsection (6) to which the non-UK resident is entitled for the tax year as a result of—
    - (i) section 56(3) or 460(3) of this Act or section 278(2) of ICTA (residence etc of claimants), or
    - (ii) double taxation arrangements.
- (6) The reliefs referred to in subsection (5) are—
- (a) an allowance under Chapter 2 of Part 3 of this Act or section 257 or 265 of ICTA (personal allowance and blind person's allowance),
  - (b) a tax reduction under Chapter 3 of Part 3 of this Act or section 257A, 257AB, 257BA or 257BB of ICTA (tax reductions for married couples and civil partners),
  - (c) relief under section 457 or 458 of this Act (payments to trade unions and police organisations),
  - (d) a tax reduction under section 459 of this Act or section 273 of ICTA (payments for benefit of family members), and
  - (e) relief under section 266 of ICTA (life assurance premiums).

## **812 Case where limit not to apply**

- (1) Section 811 does not apply to income tax to which non-UK resident trustees are liable for a tax year, if there is a beneficiary of the trust who is—
- (a) an individual who is ordinarily UK resident, or
  - (b) a UK resident company.
- (2) For the purposes of subsection (1) a person is a beneficiary of the trust if—
- (a) the person is an actual or potential beneficiary of the trust, and
  - (b) condition A or B is met in relation to the person.
- (3) Condition A is that the person is, or will or may become, entitled under the trust to receive some or all of any income under the trust.
- (4) Condition B is that some or all of any income under the trust may be paid to or used for the benefit of the person in the exercise of a discretion conferred by the trust.
- (5) The references in subsections (3) and (4) to any income under the trust include a reference to any capital under the trust so far as it represents amounts originally received by the trustees as income.

## **813 Meaning of “disregarded income”**

- (1) For the purposes of this Chapter income arising to a non-UK resident is “disregarded income” if it is—
- (a) disregarded savings and investment income (see section 825),
  - (b) disregarded annual payments (see section 826),
  - (c) disregarded pension income,
  - (d) disregarded social security income,

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- (e) disregarded transaction income (see section 814), or
  - (f) income of such other description as the Treasury may by regulations designate for the purposes of this section.
- (2) But income in relation to which the non-UK resident has a UK representative for the purposes of section 126 of, and Schedule 23 to, FA 1995 (UK representatives of non-UK residents) is not disregarded income.
- (3) Income is “disregarded pension income” if it is chargeable under Part 9 of ITEPA 2003 (pension income) because any of the following provisions of that Act applies to it—
- section 577 (UK social security pensions),
  - section 579A (pensions under registered pension schemes) (but see subsection (4) below),
  - section 609 (annuities for the benefit of dependants),
  - section 610 (annuities under non-registered occupational pension schemes), or
  - section 611 (annuities in recognition of another's services).
- (4) Income chargeable under Part 9 of ITEPA 2003 because section 579A of that Act applies to it is disregarded pension income only if the registered pension scheme in question—
- (a) falls within paragraph 1(1)(f) of Schedule 36 to FA 2004, and
  - (b) was, immediately before 6 April 2006, a retirement annuity contract to which section 605 of ITEPA 2003 applied.
- (5) Income is “disregarded social security income” if—
- (a) it is a taxable benefit listed in Table A in section 660 of ITEPA 2003, other than income support or jobseeker's allowance, and
  - (b) it is chargeable under Part 10 of that Act (social security income).

## **814 Meaning of “disregarded transaction income”**

- (1) Subsection (2) applies if a non-UK resident carries on (alone or in partnership) a business through a broker in the United Kingdom.
- (2) Income is “disregarded transaction income”, subject to subsection (6), if—
- (a) it is transaction income, and
  - (b) the independent broker conditions are met in relation to the transaction in question.
- (3) Subsection (4) applies if a non-UK resident carries on (alone or in partnership) a business through an investment manager in the United Kingdom.
- (4) Income is “disregarded transaction income”, subject to subsection (6), if—
- (a) it is transaction income, and
  - (b) the independent investment manager conditions are met in relation to the transaction in question.
- (5) In this Chapter “transaction income”, in relation to a transaction carried out through a broker or investment manager in the United Kingdom on behalf of a non-UK resident, means income which arises to the non-UK resident from—
- (a) so much of the non-UK resident's business carried on (alone or in partnership) through the broker or investment manager as relates to the transaction, or

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- (b) property or rights which, as a result of the transaction, are used by, or held by or for, the broker or investment manager on behalf of the non-UK resident.
- (6) Income is not disregarded transaction income if it is chargeable to income tax in accordance with section 171(2) of FA 1993 (profits of the underwriting business of a member of Lloyd's).
- (7) This section needs to be read with—
  - section 817 (the independent broker conditions),
  - sections 818 to 824 (the independent investment manager conditions),
  - section 827 (meaning of “investment manager” and “investment transaction”),
  - and
  - section 828 (transactions through brokers and investment managers).

#### *Limit for non-UK resident companies*

### **815 Limit on liability to income tax of non-UK resident companies**

- (1) This section applies to income tax to which a non-UK resident company is liable, otherwise than as a trustee.
- (2) The non-UK resident company's liability to income tax for a tax year is limited to the sum of amounts A and B.
- (3) Amount A is the sum of—
  - (a) any amounts representing income tax deducted from the non-UK resident company's disregarded company income for the tax year,
  - (b) any amounts representing income tax that are treated as deducted from or paid in respect of that income, and
  - (c) any tax credits in respect of that income.
- (4) Amount B is the amount that, apart from this section, would be the non-UK resident company's liability to income tax for the tax year if the non-UK resident company's disregarded company income for the tax year were left out of account.

### **816 Meaning of “disregarded company income”**

- (1) For the purposes of this Chapter income arising to a non-UK resident company is “disregarded company income” if it is—
  - (a) disregarded savings and investment income (see section 825),
  - (b) disregarded annual payments (see section 826),
  - [<sup>F122</sup>(c) income arising from a transaction carried out through a broker in the United Kingdom acting as an agent of independent status in the ordinary course of the broker's business,]
  - [<sup>F122</sup>(d) income arising from a transaction carried out through an investment manager in the United Kingdom acting as an agent of independent status in the ordinary course of the investment manager's business, or]
  - (e) income of such other description as the Treasury may by regulations designate for the purposes of this section.

[<sup>F123</sup>(2) A broker is regarded for the purposes of subsection (1)(c) as an agent of independent status acting in the ordinary course of the broker's business in relation to a transaction

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carried out on behalf of a non-UK resident company in the course of that company's trade if, and only if, the independent broker conditions are met in relation to the transaction (see section 817).

- (3) An investment manager is regarded for the purposes of subsection (1)(d) as an agent of independent status acting in the ordinary course of the investment manager's business in relation to an investment transaction carried out on behalf of a non-UK resident company in the course of that company's trade if, and only if, the independent investment manager conditions are met in relation to the investment transaction (see sections 818 to 824).
- (4) This section needs to be read with—  
 section 827 (meaning of “investment manager” and “investment transaction”), and  
 section 828 (transactions through brokers and investment managers).]

#### Textual Amendments

**F122** S. 816(1)(c)(d) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(4)(a)**

**F123** S. 816(2)-(4) substituted for s. 816(2) (with effect in accordance with art. 1(2) of the amending S.I.) by [Income Tax Act 2007 \(Amendment\) \(No.3\) Order 2007 \(S.I. 2007/3506\)](#), arts. 1(1), **3(4)(b)**

### *The independent broker conditions*

## 817 The independent broker conditions

- (1) The independent broker conditions are met in relation to a transaction carried out on behalf of a non-UK resident by a broker in the United Kingdom if—
  - (a) conditions A to D are met, if this section applies for the purposes of section 813, or
  - (b) conditions A to C and E are met, if this section applies for the purposes of section 816.
- (2) Condition A is that at the time of the transaction the broker is carrying on the business of a broker.
- (3) Condition B is that the transaction is carried out by the broker in the ordinary course of that business.
- (4) Condition C is that the remuneration which the broker receives in respect of the transaction for the provision of the services of a broker to the non-UK resident is not less than is customary for that class of business.
- (5) Condition D is that the broker does not fall for the purposes of section 126 of, and Schedule 23 to, FA 1995 to be treated as a UK representative of the non-UK resident in relation to any other income which is chargeable to income tax, or amounts which are chargeable to capital gains tax, for the same tax year as the transaction income.
- (6) Condition E is that the broker does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

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### *The independent investment manager conditions*

## **818 The independent investment manager conditions**

- (1) The independent investment manager conditions are met in relation to an investment transaction carried out on behalf of a non-UK resident by an investment manager in the United Kingdom if—
  - (a) conditions A to F are met, if this section applies for the purposes of section 813, or
  - (b) conditions A to E and G are met, if this section applies for the purposes of section 816.
- (2) Condition A is that at the time of the transaction the investment manager is carrying on a business of providing investment management services.
- (3) Condition B is that the transaction is carried out in the ordinary course of that business.
- (4) Condition C is that, when the investment manager acts on behalf of the non-UK resident in relation to the transaction, the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses dealing with each other at arm's length.
- (5) Condition D is that the requirements of the 20% rule are met (see section 819).
- (6) Condition E is that the remuneration which the investment manager receives in respect of the transaction for the provision of investment management services to the non-UK resident is not less than is customary for that class of business.
- (7) Condition F is that the investment manager does not fall for the purposes of section 126 of, and Schedule 23 to, FA 1995 to be treated as a UK representative of the non-UK resident in relation to any other income which is chargeable to income tax, or amounts which are chargeable to capital gains tax, for the same tax year as the transaction income.
- (8) Condition G is that the investment manager does not fall to be treated as a permanent establishment of the non-UK resident company in relation to any other transaction of any kind carried out in the same accounting period of the non-UK resident company as the transaction in question.

## **819 Investment managers: the 20% rule**

- (1) The requirements of the 20% rule are met if conditions A and B are met.
- (2) Condition A is that in relation to a qualifying period it has been or is the intention of the investment manager and the persons connected with the investment manager that at least 80% of the non-UK resident's relevant disregarded income should consist of amounts to which none of them has a beneficial entitlement.
- (3) Condition B is that, so far as there is a failure to fulfil that intention, that failure—
  - (a) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with the investment manager, and
  - (b) does not result from a failure by any of them to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.

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- (4) This section needs to be read with—  
     section 820 (meaning of “qualifying period”),  
     section 821 (meaning of “relevant disregarded income”), and  
     section 822 (meaning of “beneficial entitlement”).

## **820 Meaning of “qualifying period”**

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, a “qualifying period” means—
- (a) the tax year in which the transaction income is chargeable to income tax, or
  - (b) a period of not more than 5 years comprising two or more tax years including that one.
- (3) If section 819 applies for the purposes of section 816, a “qualifying period” means—
- (a) the accounting period of the non-UK resident company in which the transaction in question is carried out, or
  - (b) a period of not more than 5 years comprising two or more complete accounting periods including that one.

## **821 Meaning of “relevant disregarded income”**

- (1) This section applies for the purposes of this Chapter.
- (2) If section 819 applies for the purposes of section 813, the “relevant disregarded income” of the non-UK resident for the qualifying period is the total of the non-UK resident's income for the tax years comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (3) If section 819 applies for the purposes of section 816, the “relevant disregarded income” of the non-UK resident company for the qualifying period is the total of the non-UK resident company's income for the accounting periods comprised in the qualifying period which derives from the transactions mentioned in subsection (4).
- (4) The transactions referred to in subsections (2) and (3) are investment transactions—
- (a) carried out by the investment manager on the non-UK resident's behalf, and
  - (b) in relation to which the independent investment manager conditions are met, ignoring the requirements of the 20% rule.

## **822 Meaning of “beneficial entitlement”**

- (1) This section applies for the purposes of this Chapter.
- (2) A person has a “beneficial entitlement” to relevant disregarded income if the person has or may acquire a beneficial entitlement that is, or would be, attributable to the relevant disregarded income as a result of having an interest or other rights mentioned in subsection (3).
- (3) The interests and rights referred to in subsection (2) are—
- (a) an interest (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of the relevant disregarded income is represented, or



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- (b) an interest in, or other rights in relation to, the non-UK resident.

## **823 Treatment of transactions where requirements of 20% rule not met**

- (1) This section applies in the case of an investment transaction in relation to which the independent investment manager conditions are met, except for the requirements of the 20% rule.
- (2) This Chapter has effect as if the requirements of that rule were met in relation to the transaction but only in relation to—
  - (a) so much of the transaction income of the non-UK resident as falls within subsection (3), if this section applies for the purposes of section 813, or
  - (b) so much of the income of the non-UK resident company deriving from the transaction as falls within subsection (3), if this section applies for the purposes of section 816.
- (3) Income falls within this subsection if it does not represent income—
  - (a) which is relevant disregarded income of the non-UK resident, and
  - (b) to which the investment manager or a person connected with the investment manager has or has had any beneficial entitlement.

## **824 Application of 20% rule to collective investment schemes**

- (1) This section applies if amounts arise or accrue to the non-UK resident as a participant in a collective investment scheme.
- (2) It applies for the purposes of determining whether the requirements of the 20% rule are met in relation to a transaction carried out for the purposes of the scheme.
- (3) In applying this section make the following assumptions—
  - (a) that all the transactions carried out for the purposes of the scheme are carried out on behalf of a company (“the assumed company”) which is—
    - (i) constituted for the purposes of the scheme, and
    - (ii) non-UK resident, and
  - (b) that the participants do not have any rights in respect of the amounts arising or accruing in respect of those transactions, other than the rights which, if they held shares in the assumed company, would be their rights as shareholders.
- (4) If the scheme is such that the assumed company would not be regarded for tax purposes as carrying on a trade in the United Kingdom in relation to the appropriate relevant period, the requirements of the 20% rule are treated as met in relation to a transaction carried out for the purposes of the scheme.
- (5) If the scheme is such that the assumed company would be so regarded for tax purposes, sections 819 to 823 have effect in relation to a transaction carried out for the purposes of the scheme with the modifications in subsection (6).
- (6) The modifications are—
  - (a) for references to the non-UK resident substitute references to the assumed company, and
  - (b) for references to the non-UK resident's relevant disregarded income for a qualifying period substitute references to the sum of the amounts that would,

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for relevant periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions—

- (i) carried out by the investment manager, and
- (ii) assumed to be carried out on behalf of the company.

(7) In this section—

“the appropriate relevant period” is—

- (a) the tax year in which the transaction income is chargeable to income tax, if this section applies for the purposes of section 813, or
- (b) the accounting period in which the transaction is carried out, if this section applies for the purposes of section 816,

“collective investment scheme” has the meaning given by section 235 of FISMA 2000,

“participant”, in relation to a collective investment scheme, is construed in accordance with that section, and

“relevant period” means—

- (a) a tax year, if this section applies for the purposes of section 813, or
- (b) an accounting period, if this section applies for the purposes of section 816.

### *Supplementary*

## **825 Meaning of “disregarded savings and investment income”**

(1) For the purposes of this Chapter income is “disregarded savings and investment income” if—

- (a) it is chargeable under Chapter 3 or 5 of Part 4 of ITTOIA 2005 (dividends etc from UK resident companies and stock dividends from UK resident companies), or
- (b) it is within subsection (2) and is not relevant foreign income.

(2) Income is within this subsection if it is chargeable under—

- (a) Chapter 2 of Part 4 of ITTOIA 2005 (interest),
- (b) Chapter 7 of that Part (purchased life annuity payments),
- (c) Chapter 8 of that Part (profits from deeply discounted securities),
- (d) Chapter 10 of that Part (distributions from unauthorised unit trusts), or
- (e) Chapter 11 of that Part (transactions in deposits).

## **826 Meaning of “disregarded annual payments”**

For the purposes of this Chapter income is “disregarded annual payments” if it is not relevant foreign income and is chargeable under—

- (a) section 579 of ITTOIA 2005, so far as it relates to annual payments (royalties etc from intellectual property),
- (b) Chapter 4 of Part 5 of that Act, so far as it relates to annual payments (certain telecommunication rights: non-trading income), or
- (c) Chapter 7 of Part 5 of that Act (annual payments not otherwise charged).

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## **827 Meaning of “investment manager” and “investment transaction”**

- (1) In this Chapter “investment manager” means a person who provides investment management services.
- (2) In this Chapter “investment transaction” means—
  - (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
  - (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
  - (c) such other transactions as the Treasury may by regulations designate for the purposes of this section.
- (3) For the purposes of subsection (2) a contract is not prevented from being a futures contract or an options contract by the fact that a party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

## **828 Transactions through brokers and investment managers**

- (1) For the purposes of this Chapter a person is regarded as carrying out a transaction on behalf of another if the person—
  - (a) undertakes the transaction, whether on behalf of or to the account of the other, or
  - (b) gives instructions for it to be so carried out by another.
- (2) In the case of a person who acts as a broker or investment manager as part only of a business, this Chapter has effect as if that part were a separate business.

# **CHAPTER 2**

## **RESIDENCE**

## **829 Residence of individuals temporarily abroad**

- (1) This section applies if—
  - (a) an individual has left the United Kingdom for the purpose only of occasional residence abroad, and
  - (b) at the time of leaving the individual was both UK resident and ordinarily UK resident.
- (2) Treat the individual as UK resident for the purpose of determining the individual's liability for income tax for any tax year during the whole or a part of which the individual remains outside the United Kingdom for the purpose only of occasional residence abroad.

## **830 Residence of individuals working abroad**

- (1) This section applies for income tax purposes if an individual works full-time in one or both of—
  - (a) a foreign trade, and

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- (b) a foreign employment.
- (2) In determining whether the individual is UK resident ignore any living accommodation available in the United Kingdom for the individual's use.
- (3) A trade is foreign if no part of it is carried on in the United Kingdom.
- (4) An employment is foreign if all of its duties are performed outside the United Kingdom.
- (5) An employment is also foreign if in the tax year in question—
  - (a) the duties of the employment are in substance performed outside the United Kingdom, and
  - (b) the only duties of the employment performed in the United Kingdom are duties which are merely incidental to the duties of the employment performed outside the United Kingdom in the year.
- (6) In this section—
  - “employment” includes an office, and
  - “trade” includes profession and vocation.

### **831 Foreign income of individuals in the United Kingdom for temporary purpose**

- (1) Subsection (2) applies in relation to an individual if—
  - (a) the individual is in the United Kingdom for some temporary purpose only and with no view to establishing the individual's residence in the United Kingdom, and
  - (b) in the tax year in question the individual has not actually resided in the United Kingdom at one or several times for a total period equal to 183 days (or more).

In determining whether an individual is within paragraph (a) ignore any living accommodation available in the United Kingdom for the individual's use.

- (2) Apply the following rules in determining the individual's liability for income tax.

#### *Rule 1*

In relation to pension or social security income arising from a source outside the United Kingdom, treat the individual as non-UK resident for the purposes of the following—

- (a) Chapter 4 of Part 9 of ITEPA 2003 (tax on foreign pensions),
- (b) Chapter 5A of that Part (tax on pensions under registered pension schemes) but only if the income is an annuity under a registered pension scheme within paragraph 1(1)(f) of Schedule 36 to FA 2004,
- (c) Chapter 10 of that Part (tax on employment-related annuities),
- (d) Chapter 15 of that Part (tax on voluntary annual payments),
- (e) section 647 of ITEPA 2003 (meaning of “foreign residence condition”) but only in its application for the purposes of section 651 of that Act (which provides an exemption for tax under Chapter 14 of Part 9 of that Act), and
- (f) Chapter 6 of Part 10 of ITEPA 2003 (taxable foreign benefits).

See sections 566 and 657 of ITEPA 2003 for the definitions of “pension income” and “social security income”.

#### *Rule 2*

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In relation to income arising from a source outside the United Kingdom, treat the individual as non-UK resident for the purposes of any charge under a provision mentioned in section 830(2) of ITTOIA 2005 (which contains a list of provisions under which relevant foreign income is charged).

In this rule “income” does not include income chargeable as a result of section 844 of ITTOIA 2005 (unremittable income: income charged on withdrawal of relief after source ceases).

- (3) Paragraph (e) of Rule 1 in subsection (2) applies only if—
- (a) the individual makes a claim as mentioned in section 647(3)(a) of ITEPA 2003, and
  - (b) the Commissioners are satisfied that subsection (2) of this section applies in relation to the individual.
- (4) Subsection (5) applies in relation to an individual if subsection (2) would have applied in relation to the individual but for subsection (1)(b).
- (5) Apply the rules set out in subsection (2) in determining the individual's liability for income tax.
- But—
- (a) instead of treating the individual as non-UK resident in relation to the income and for the purposes mentioned in those rules, treat the individual as UK resident, and
  - (b) ignore subsection (3).

### **832 Employment income of individuals in the United Kingdom for temporary purpose**

- (1) Subsection (2) applies in relation to an individual if—
- (a) the individual is in the United Kingdom for some temporary purpose only and with no intention of establishing the individual's residence in the United Kingdom, and
  - (b) during the tax year in question the individual spends (in total) less than 183 days in the United Kingdom.

In determining whether an individual is within paragraph (a) ignore any living accommodation available in the United Kingdom for the individual's use.

- (2) Treat the individual as non-UK resident for the purposes of Chapters 4 and 5 of Part 2 of ITEPA 2003 (which set out rules for determining taxable earnings from employment).
- (3) Subsection (4) applies in relation to an individual if subsection (2) would have applied in relation to the individual but for subsection (1)(b).
- (4) Treat the individual as UK resident for the purposes of the provisions mentioned in subsection (2).

### **833 Visiting forces and staff of designated allied headquarters**

- (1) This section applies to an individual who—

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- (a) is a member of a visiting force of a designated country or of a civilian component of such a force,
  - (b) is in the United Kingdom, but only because of being a member of the force or the civilian component, and
  - (c) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (2) For the purposes of subsection (1)—
  - (a) members of the armed forces of a designated country who are attached to a designated allied headquarters are treated as a visiting force of that country, and
  - (b) whether an individual is a member of a civilian component of such a force is to be determined accordingly.
- (3) This section also applies to an individual who—
  - (a) is of a category for the time being agreed between Her Majesty's Government in the United Kingdom and the other members of the North Atlantic Council,
  - (b) is employed by a designated allied headquarters,
  - (c) is in the United Kingdom, but only because of being employed by the designated allied headquarters, and
  - (d) is not a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen.
- (4) If this section applies to an individual throughout a period, the period is not treated for income tax purposes as—
  - (a) a period of residence in the United Kingdom, or
  - (b) creating a change of the individual's residence or domicile.
- (5) Subsection (4) does not affect the operation of section 56 or 460 of this Act or section 278 of ICTA (residence etc of claimants) in relation to an individual for any tax year.
- (6) Subsections (1) to (3) are to be interpreted as if—
  - (a) they were in Part 1 of the Visiting Forces Act 1952 (c. 67), and
  - (b) references in that Act to a country to which a provision of that Act applies were references to a designated country.
- (7) In this section—
  - “allied headquarters” means an international military headquarters established under the North Atlantic Treaty, and
  - “designated” means designated for the purpose in question by or under an Order in Council made for giving effect to an international agreement.

## 834 Residence of personal representatives

- (1) This section applies for income tax purposes if the personal representatives of a deceased person (“D”) include one or more persons who are UK resident and one or more persons who are non-UK resident.
- (2) If the following condition is met, the person or persons who are non-UK resident are treated, in their capacity as personal representatives, as UK resident.

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- (3) The condition is that when D died D was UK resident, ordinarily UK resident or domiciled in the United Kingdom.
- (4) If that condition is not met, the person or persons who are UK resident are treated, in their capacity as personal representatives, as non-UK resident.

### **835 Residence rules for trustees and companies**

- (1) See sections 475 and 476 for rules about the residence of the trustees of a settlement.
- (2) See the following provisions for rules about the residence of companies—  
sections 66 and 66A of FA 1988, and  
section 249 of FA 1994.

## **CHAPTER 3**

### **JOINTLY HELD PROPERTY**

### **836 Jointly held property**

- (1) This section applies if income arises from property held in the names of individuals—
  - (a) who are married to, or are civil partners of, each other, and
  - (b) who live together.
- (2) The individuals are treated for income tax purposes as beneficially entitled to the income in equal shares.
- (3) But this treatment does not apply in relation to any income within any of the following exceptions.

#### *Exception A*

Income to which neither of the individuals is beneficially entitled.

#### *Exception B*

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

#### *Exception C*

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

#### *Exception D*

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

#### *Exception E*

Income consisting of a distribution arising from property consisting of—

- (a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or

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- (b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

“Shares” and “securities” have the same meaning as in section 254 of ICTA.

*Exception F*

Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as—

- (a) the income of the other individual, or
- (b) the income of a third party.

### **837 Jointly held property: declarations of unequal beneficial interests**

- (1) The individuals may make a joint declaration under this section if—
  - (a) one of them is beneficially entitled to the income to the exclusion of the other, or
  - (b) they are beneficially entitled to the income in unequal shares, and their beneficial interests in the income correspond to their beneficial interests in the property from which it arises.
- (2) The declaration must state the beneficial interests of the individuals in—
  - (a) the income to which the declaration relates, and
  - (b) the property from which that income arises.
- (3) The declaration has effect only if notice of it is given to an officer of Revenue and Customs—
  - (a) in such form and manner as the Commissioners for Her Majesty's Revenue and Customs may prescribe, and
  - (b) within the period of 60 days beginning with the date of the declaration.
- (4) The declaration has effect in relation to income arising on or after the date of the declaration.
- (5) The declaration continues to have effect until such time (if any) as there is a change in the beneficial interests of the individuals in either—
  - (a) the income to which the declaration relates, or
  - (b) the property from which that income arises.

## **CHAPTER 4**

### **OTHER MISCELLANEOUS RULES**

### **838 Local authorities and local authority associations**

- (1) A local authority in the United Kingdom is not liable to income tax in respect of its income.
- (2) A local authority association in the United Kingdom is not liable to income tax in respect of its income.



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- (3) Tax is repayable as a result of subsection (1) or (2) only if a claim for repayment is made.

### **839 Issue departments of the Reserve Bank of India and the State Bank of Pakistan**

No liability to income tax arises in respect of the income of the issue department of—

- (a) the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or
- (b) the State Bank of Pakistan constituted under orders made under section 9 of the Indian Independence Act 1947 (c. 30).

### **840 Government securities held by non-UK resident central banks**

- (1) No liability to income tax arises in respect of income from securities which is—
- (a) income payable out of the public revenue of the United Kingdom, and
  - (b) income of a bank, or the issue department of a bank, to which this section applies for the time being.
- (2) But subsection (1) does not prevent the income from being taken into account in calculating profits, gains or losses of a business carried on in the United Kingdom.
- (3) Her Majesty may by Order in Council direct that this section applies to a bank or its issue department if it appears to Her Majesty that the bank—
- (a) is non-UK resident, and
  - (b) is entrusted by the government of a territory outside the United Kingdom with the custody of the territory's principal foreign exchange reserves.
- (4) No recommendation may be made to Her Majesty in Council to make an order under this section unless a draft of the order has been laid before and approved by a resolution of the House of Commons.

### **841 Official agents of Commonwealth countries etc**

- (1) This section applies if an individual is employed in the United Kingdom as an official agent for—
- (a) a country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) (which contains a list of Commonwealth countries) or the Republic of Ireland, or
  - (b) a state or province of a country within paragraph (a).
- (2) If conditions A and B are met, the individual is entitled to the same immunity from income tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964 (c. 81).
- (3) Condition A is that the individual has been certified—
- (a) to be ordinarily resident outside the United Kingdom, and
  - (b) to be UK resident solely for the purposes of the individual's functions as an official agent.
- (4) The certification must have been done by (as the case may be)—
- (a) the High Commissioner of the country for which the individual is an official agent, or

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- (b) the Agent-General of the state or province for which the individual is an official agent.
- (5) In subsection (4)(a) “High Commissioner” includes the head of the mission of the country in question by whatever name called.
- (6) Condition B is that the individual's functions as an official agent are not performed in connection with a trade, business or other undertaking carried on for the purposes of profit.
- (7) In this section “head of the mission” and “a member of the staff of a mission” are to be read in accordance with the Diplomatic Privileges Act 1964.

## **842 European Economic Interest Groupings**

- (1) The following rules about European Economic Interest Groupings apply for the purposes of charging income tax—

### *Rule 1*

A grouping is treated as acting as the agent of its members.

### *Rule 2*

The activities of a grouping are treated as those of its members acting jointly.

### *Rule 3*

Each member of a grouping is treated as having a share of the grouping's property, rights and liabilities.

### *Rule 4*

Any trade or profession carried on by the grouping is treated as carried on in partnership by the members of the grouping.

- (2) For the purposes of Rule 3, a member's share of any property, rights or liabilities of a grouping is determined according to the contract under which the grouping is established.
- (3) If the contract does not provide for this, the member's share is determined by reference to the share of the profits of the grouping to which the member is entitled under the contract.
- (4) If the contract does not provide for this either, the members are treated as having equal shares of the property, rights and liabilities of the grouping.
- (5) “European Economic Interest Grouping” means a European Economic Interest Grouping formed under Council Regulation ([EEC](#)) No 2137/85 of 25 July 1985, whether registered in Great Britain, Northern Ireland or elsewhere.

## **843 Restriction of deductions for annual payments**

In calculating a person's income from any source, no deduction is allowed for an annual payment to which section 904 applies (annual payments for dividends or non-taxable consideration).

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#### **844 Letters patent etc: exempting provisions**

- (1) No provision in letters patent granted by the Crown is to be construed as conferring exemption from income tax.
- (2) Subsection (1) applies whether the letters patent are granted before or after the date on which this Act is passed.
- (3) Any provision of the letters patent purporting to override the effect of subsection (1) is void.

#### **845 Extra return to be treated as interest etc**

- (1) This section applies if—
  - (a) securities (“old securities”) of a particular kind are issued by way of an original issue of securities of that kind,
  - (b) on a later occasion securities (“new securities”) of the same kind are issued,
  - (c) a sum (“the extra return”) is payable in respect of the new securities by the issuer of them to reflect the fact that interest is accruing on the old securities,
  - (d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and
  - (e) the extra return is equal to the amount of interest mentioned in subsection (2).
- (2) The amount of interest referred to in subsection (1)(e) is—
  - (a) the amount of interest payable for the relevant period on so many old securities as there are new, or
  - (b) if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new.
- (3) A sum paid or payable by way of the extra return is treated for income tax purposes as if it were paid or payable as interest (so far as it would not be treated in that way apart from this subsection).
- (4) No relief for the extra return is to be given to the issuer of the new securities.

#### **846 Interpretation of section 845**

- (1) This section applies for the purposes of section 845.
- (2) Securities are of the same kind if they—
  - (a) are treated as being of the same kind by the practice of a recognised stock exchange, or
  - (b) would be so treated if dealt in on a recognised stock exchange.
- (3) “The relevant period” is the period—
  - (a) beginning with the day mentioned in subsection (4), and
  - (b) ending with the day (“the new issue day”) on which the new securities are issued.
- (4) The day referred to in subsection (3)(a) is the day after—
  - (a) the last (or only) interest payment day before the new issue day, or
  - (b) if there is no interest payment day before the new issue day, the day on which the old securities are issued.

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- (5) In subsection (4) “interest payment day” means a day on which interest is payable under the old securities.
- (6) “Relief” means relief by way of deduction in calculating amounts of income charged to income tax or in calculating net income.

## PART 15

### DEDUCTION OF INCOME TAX AT SOURCE

#### CHAPTER 1

##### INTRODUCTION

#### 847 Overview of Part

- (1) This Part deals with deduction of income tax at source.
- (2) The following Chapters contain duties to deduct sums representing income tax from certain payments—
  - (a) Chapter 2 (deposit-takers and building societies),
  - (b) Chapter 3 (certain payments of yearly interest),
  - (c) Chapter 4 (payments in respect of building society securities),
  - (d) Chapter 5 (payments of UK public revenue dividends),
  - (e) Chapter 6 (annual payments and patent royalties),
  - (f) Chapter 7 (other payments connected with intellectual property),
  - (g) Chapter 9 (manufactured payments), and
  - (h) Chapter 10 (non-commercial payments by companies).
- (3) Chapters 6 and 7 are subject to Chapter 8 which makes special provision in relation to the deduction of sums representing income tax from royalty payments.
- (4) Chapter 11 contains provision disapplying some of the duties to deduct where payments are made between companies etc.
- (5) The following Chapters contain further provision in connection with the deduction (or deemed deduction) of sums representing income tax from certain payments (or deemed payments)—
  - (a) Chapter 12 (funding bonds),
  - (b) Chapter 13 (unauthorised unit trusts), and
  - (c) Chapter 14 (tax avoidance: directions for deductions from payments to non-UK residents).
- (6) Chapters 15 to 17 contain provision about the collection of income tax in respect of payments from which sums are required to be deducted (or from which sums are treated as deducted) under the preceding Chapters.
- (7) Chapter 18 deals with regimes involving the deduction of income tax at source which apply in the case of—
  - (a) visiting performers,

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- (b) non-resident landlords, and
  - (c) Real Estate Investment Trusts.
- (8) Chapter 19 makes general provision for this Part including—
- (a) provision about the giving of statements about deduction of income tax,
  - (b) provision about payments where the recipient is a company or where the payer is a public department, and
  - (c) exceptions from duties to deduct for payments made by designated international organisations, some payments under derivative contracts and for some payments of interest on foreign currency securities.
- (9) The following provisions also deal with deduction of income tax at source—
- (a) Part 11 of ITEPA 2003 (Pay As You Earn), and
  - (b) Chapter 3 of Part 3 of FA 2004 (construction industry scheme).

#### **848 Income tax deducted at source treated as income tax paid by recipient**

- (1) A sum representing income tax which is deducted (or treated as deducted) under this Part from a payment is treated as income tax paid by the recipient.
- (2) The sum is accordingly taken into account under sections 59B and 59D of TMA 1970 (see also paragraph 8 of Schedule 18 to FA 1998) in determining the income tax or corporation tax payable by, or repayable to, the recipient.
- (3) But this section does not apply to income tax deducted at source under section 966 (visiting performers) or 971 (non-resident landlords).

#### **849 Interaction with other Income Tax Acts provisions**

- (1) Regulations made under section 791 of ICTA (double taxation relief: power to make regulations for carrying out section 788) make provision disapplying or otherwise affecting duties to deduct under this Part in circumstances where relief is available under double taxation arrangements.
- (2) Sections 821 and 822 of ICTA make provision in relation to under-deductions and over-deductions from some payments which are made before the passing of the relevant annual Act imposing income tax and corporation tax.
- (3) In accordance with section 783 of ITTOIA 2005 (general disregard of exempt income for income tax purposes), any payment (or part of a payment) which is exempt from income tax as a result of Part 6 of ITTOIA 2005 is ignored for the purposes of the duties under this Part.

This is subject to any express or implied provision to the contrary.

- (4) Paragraphs 11 to 13 of Schedule 2 to FA 2005 (alternative finance arrangements: further provisions) make provision for Chapters 2 to 5, 12 and 19 to have effect in relation to alternative finance arrangements.
- (5) For exceptions from the duties to deduct under Chapters 3, 6, 7, 10 and 14 in connection with the London Olympic Games and Paralympic Games see—
  - (a) Chapter 6 of Part 3 of FA 2006, and
  - (b) regulations made under that Chapter.

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## CHAPTER 2

### DEDUCTION BY DEPOSIT-TAKERS AND BUILDING SOCIETIES

#### *Introduction*

#### **850 Overview of Chapter**

- (1) This Chapter deals with the deduction of sums representing income tax by deposit-takers and building societies from payments of interest on relevant investments.
- (2) Section 851 contains a general duty to deduct sums representing income tax from such payments and section 852 confers power on the Commissioners for Her Majesty's Revenue and Customs to disapply section 851 by regulations.
- (3) Sections 853 to 856 set out some basic concepts, so that—
  - (a) section 853 defines “deposit-taker” (and section 854 allows the Treasury by order to prescribe persons as deposit-takers),
  - (b) section 855 defines “investment” and “deposit”, and
  - (c) section 856 explains which investments are relevant investments.
- (4) Section 856 is subject to—
  - (a) section 857 (which sets out when investments must be treated as relevant and when they may be treated as not relevant), and
  - (b) sections 858 to 870 (which describe various kinds of investment which are not relevant investments).
- (5) Sections 871 to 873 contain supplementary provisions.
- (6) For the purposes of this Chapter—
  - (a) any reference to interest paid by a building society on a relevant investment includes a reference to a dividend paid by the society in respect of the investment,
  - (b) “dividend” includes any distribution (whether or not described as a dividend), and
  - (c) crediting interest counts as paying it.

#### *Duty to deduct sums representing income tax*

#### **851 Duty to deduct sums representing income tax**

- (1) This section applies if—
  - (a) a deposit-taker or building society makes a payment of interest on an investment (see section 855(1)), and
  - (b) when the payment is made, the investment is a relevant investment (see section 856).
- (2) The deposit-taker or building society must, on making the payment, deduct from it a sum representing income tax on it at the savings rate in force for the tax year in which it is made.

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- (3) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section, see Chapter 15.

## **852 Power to make regulations disapplying section 851**

- (1) The Commissioners for Her Majesty's Revenue and Customs may make regulations which provide that section 851 does not apply in relation to a payment of interest if prescribed conditions are met.
- (2) The regulations may, in particular, include—
- (a) provision for a certificate to be supplied to the effect that the person beneficially entitled to a payment is unlikely to be liable to pay any income tax for the tax year in which it is made,
  - (b) provision for the certificate to be supplied by that person or another prescribed person,
  - (c) provision about the time when, and the manner in which, a certificate is to be supplied, and
  - (d) provision about the form and contents of a certificate.
- (3) Any provision included in the regulations under subsection (2)(d) may allow the Commissioners to make requirements about the form and contents of a certificate.
- (4) In this section “prescribed” means prescribed in the regulations.

### *Deposit-takers and relevant investments*

## **853 Meaning of “deposit-taker”**

- (1) In this Chapter “deposit-taker” means—
- (a) the Bank of England, or
  - (b) a person to whom one of the following subsections or section 854 applies.
- (2) This subsection applies to a person—
- (a) who has permission under Part 4 of FISMA 2000 to accept deposits which are relevant investments, and
  - (b) who is not—
    - (i) a building society,
    - (ii) a society registered within the meaning of the Friendly Societies Act 1974 (c. 46) or incorporated under the Friendly Societies Act 1992 (c. 40),
    - (iii) a society registered as a credit union under the Industrial and Provident Societies Act 1965 (c. 12) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)), or
    - (iv) an insurance company within the meaning of section 275 of FA 2004.
- (3) This subsection applies to a company within the meaning of the Companies Act 1985 (c. 6)—
- (a) in respect of which a resolution has been passed by a local authority under—
    - (i) section 48(3) of the Banking Act 1979 (c. 37), or
    - (ii) section 103(3) of the Banking Act 1987 (c. 22), and

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- (b) which is exempt from the prohibition in section 19 of FISMA 2000 on accepting deposits which are relevant investments.
- (4) This subsection applies to a local authority.
- (5) This subsection applies to an EEA firm which—
  - (a) is of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 (EEA passport rights), and
  - (b) has permission under paragraph 15 of that Schedule to accept deposits (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule).
- (6) This subsection applies to a person—
  - (a) who is authorised for the purposes of FISMA 2000, and
  - (b) whose business consists wholly or mainly of dealing in financial instruments as principal.

For the meaning of “financial instrument”, see section 984.

#### **854 Power to prescribe persons as deposit-takers**

- (1) This section applies to a person who receives deposits in the course of carrying on business or activities and—
  - (a) is for the time being prescribed by order by the Treasury for the purposes of this section, or
  - (b) is a member of a class of persons which is for the time being so prescribed.
- (2) An order under this section may prescribe a person or class of person—
  - (a) in relation to all deposits which are relevant investments, or
  - (b) in relation to deposits which are relevant investments of a kind specified in the order.
- (3) If a person is prescribed only in relation to deposits which are relevant investments of a kind specified in the order, the reference in section 851(1)(b) to “relevant investment” is to be read as a reference only to relevant investments of the kind so specified.

#### **855 Meaning of “investment” and “deposit”**

- (1) In this Chapter “investment” means—
  - (a) a deposit with a deposit-taker,
  - (b) a deposit with a building society,
  - (c) shares in a building society, or
  - (d) a loan to a building society.
- (2) In this Chapter “deposit” means a sum of money paid on terms which mean that it will be repaid (with or without interest)—
  - (a) on demand, or
  - (b) at a time or in circumstances agreed by or on behalf of the person who pays it and the person who receives it.

#### **856 Investments which are relevant investments**

- (1) An investment is a relevant investment for the purposes of this Chapter if it meets—



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- (a) the individual interest condition (see subsection (3)),
  - (b) the Scottish partnership condition (see subsection (4)),
  - (c) the personal representative condition (see subsection (5)), or
  - (d) the settlement condition (see subsection (6)).
- (2) But an investment is not a relevant investment if any of sections 858 to 870 prevent it from being a relevant investment.
- (3) An investment meets the individual interest condition if the only persons beneficially entitled to interest on the investment are individuals.
- (4) An investment meets the Scottish partnership condition if—
  - (a) a Scottish partnership is beneficially entitled to all interest on the investment, and
  - (b) that partnership consists only of individuals.
- (5) An investment meets the personal representative condition if personal representatives are entitled to any interest on the investment and they receive it in that capacity.
- (6) An investment meets the settlement condition if all interest on the investment is income arising to the trustees of a discretionary or accumulation settlement and they receive it in that capacity.

For the meaning of “discretionary or accumulation settlement”, see section 873(1).

## **857 Investments to be treated as being or as not being relevant investments**

- (1) A deposit-taker or building society must treat every investment with it as a relevant investment unless satisfied that the investment is not a relevant investment.
- (2) If a deposit-taker or building society is satisfied that an investment is not a relevant investment, it may continue to treat the investment as not being a relevant investment until subsection (3) applies.
- (3) This subsection applies when the deposit-taker or building society has information which can reasonably be taken to indicate that the investment is or may be a relevant investment.

*Investments which are not relevant investments: non-UK resident beneficiaries*

## **858 Declarations of non-UK residence: individuals**

- (1) This section applies to an investment with a deposit-taker or building society which meets the individual interest condition in section 856(3).
- (2) The investment is not a relevant investment if—
  - (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains the name and principal residential address of the individual or (as the case may be) each of the individuals entitled to the interest,

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- (d) the declaration contains such other information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (e) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made—
- (a) the person who is beneficially entitled to the interest is not ordinarily UK resident, or
  - (b) (as the case may be) all the persons who are so entitled are not ordinarily UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if any individual in respect of whom it is made becomes ordinarily UK resident.
- (5) In this section “appropriate person” means—
- (a) a person who is beneficially entitled to interest on the investment, or
  - (b) a person to whom any such interest is payable.

#### **859 Declarations of non-UK residence: Scottish partnerships**

- (1) This section applies to an investment with a deposit-taker or building society which meets the Scottish partnership condition in section 856(4).
- (2) The investment is not a relevant investment if—
- (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains the name and principal residential address of each of the partners,
  - (d) the declaration contains such other information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (e) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made, all of the partners of the partnership are not ordinarily UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if any partner in respect of whom it is made becomes ordinarily UK resident.
- (5) In this section “appropriate person” means—
- (a) the partnership that is beneficially entitled to the interest on the investment, or
  - (b) a person to whom any such interest is payable.

#### **860 Declarations of non-UK residence: personal representatives**

- (1) This section applies to an investment with a deposit-taker or building society which meets the personal representative condition in section 856(5).
- (2) The investment is not a relevant investment if—

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- (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains such information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (c) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that the deceased was not ordinarily UK resident immediately before the deceased's death.
- (4) In this section “appropriate person” means—
  - (a) any of the personal representatives who are entitled to receive interest on the investment, or
  - (b) a person to whom any such interest is payable.

## **861 Declarations of non-UK residence: settlements**

- (1) This section applies to an investment with a deposit-taker or building society which meets the settlement condition in section 856(6).
- (2) The investment is not a relevant investment if—
  - (a) an appropriate person has made the declaration set out in subsection (3) to the deposit-taker or building society,
  - (b) the declaration contains the undertaking set out in subsection (4),
  - (c) the declaration contains such information as the Commissioners for Her Majesty's Revenue and Customs may reasonably require, and
  - (d) the declaration is in such form as the Commissioners may prescribe or authorise.
- (3) The declaration is that, at the time when the declaration is made—
  - (a) the trustees who are entitled to the interest are non-UK resident (see section 475), and
  - (b) no person who is a trustee has reasonable grounds for believing that any beneficiary under the settlement is—
    - (i) an individual who is ordinarily UK resident,
    - (ii) a company which is UK resident, or
    - (iii) a Scottish partnership any of the partners of which is an individual who is ordinarily UK resident or a company which is UK resident.
- (4) The undertaking is an undertaking by the person making it to notify the person to whom it is made if—
  - (a) the trustees become UK resident,
  - (b) an individual in respect of whom it is made becomes ordinarily UK resident,
  - (c) a company in respect of which it is made becomes UK resident,
  - (d) an individual partner in any Scottish partnership in respect of which it is made becomes ordinarily UK resident,
  - (e) a company partner in any Scottish partnership in respect of which it is made becomes UK resident,
  - (f) a partner who is an ordinarily UK resident individual or a UK resident company joins any Scottish partnership in respect of which it is made, or

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- (g) a person within any of sub-paragraphs (i) to (iii) of subsection (3)(b) becomes or is found to be a beneficiary under the settlement to which the declaration relates.
- (5) In this section “appropriate person” means—
  - (a) any person who is a trustee entitled to receive interest on the investment, or
  - (b) a person to whom any such interest is payable.
- (6) References in this section to a beneficiary under the settlement are to be construed in accordance with section 873(3) (meaning of “beneficiary under a discretionary or accumulation settlement”).

## **862 Inspection of declarations**

- (1) This section applies if an officer of Revenue and Customs by notice requires a deposit-taker or building society to make available for inspection the declarations made to it under sections 858 to 861 which are referred to in the notice.
- (2) The deposit-taker or building society must make the declarations available for inspection—
  - (a) by an officer of Revenue and Customs who is named in the notice, and
  - (b) within such time as the notice may specify.
- (3) An officer of Revenue and Customs to whom the declarations must be made available may take copies or extracts from them.

*Other investments which are not relevant investments*

## **863 General client account deposits**

- (1) An investment is not a relevant investment if it is a general client account deposit.
- (2) An investment is a general client account deposit for the purposes of this section if—
  - (a) it is a deposit held by a deposit-taker or building society in a client account, and
  - (b) provision made under any enactment requires the person whose account it is to make payments representing interest to some or all of the clients for whom, or on whose account, that person received the sums deposited in the account.
- (3) But an investment is not a general client account deposit if the account in which it is held is identified by the deposit-taker or building society as one in which sums are held only for one or more particular clients of the person whose account it is.

## **864 Qualifying uncertificated eligible debt security units**

An investment is not a relevant investment if it is a deposit in respect of which a deposit-taker or building society has issued a qualifying uncertificated eligible debt security unit (see section 986).

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## **865 Qualifying certificates of deposit**

An investment is not a relevant investment if it is a deposit in respect of which a deposit-taker or building society has issued a qualifying certificate of deposit (see section 985).

## **866 Qualifying time deposits**

- (1) An investment is not a relevant investment if it is a qualifying time deposit.
- (2) An investment is a qualifying time deposit for the purposes of this section if—
  - (a) it is a deposit consisting of a loan of at least £50,000,
  - (b) the terms of the deposit require its repayment at a specified time within 5 years beginning with the date on which it is made,
  - (c) those terms do not make provision for the transfer of the right to repayment, and
  - (d) those terms prevent partial withdrawals of, or additions to, the deposit.
- (3) If a deposit is denominated in a foreign currency, subsection (2)(a) has effect as if it referred to an amount which is at least the equivalent in that currency of £50,000 at the time the deposit is made.

## **867 Lloyd's premium trust funds**

- (1) An investment is not a relevant investment if it forms part of a premium trust fund of an underwriting or former underwriting member of Lloyd's.
- (2) In this section “premium trust fund” has the meaning given in section 184 of FA 1993.

## **868 Investments held outside the United Kingdom**

- (1) An investment with a deposit-taker is not a relevant investment if—
  - (a) the deposit-taker is UK resident for income tax purposes or corporation tax purposes, and
  - (b) the investment is held at a branch of the deposit-taker situated outside the United Kingdom.
- (2) An investment with a deposit-taker is not a relevant investment if—
  - (a) the deposit-taker is non-UK resident for income tax purposes or corporation tax purposes, and
  - (b) the investment is not held at a branch of the deposit-taker situated in the United Kingdom.
- (3) An investment with a building society is not a relevant investment if it is held at a branch of the building society situated outside the United Kingdom.
- (4) For the purposes of this section an investment is held at a branch of a deposit-taker or building society if the investment is recorded in its books as a liability of that branch.

## **869 Sale and repurchase of securities**

- (1) An investment is not a relevant investment if it is a loan which is treated as made to a building society by virtue of section 607 (treatment of price differences under repos).

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- (2) An investment is not a relevant investment if it is an amount of cash which is—
  - (a) received by a building society in connection with a repo in circumstances where section 607 applies, and
  - (b) required as a result of a variation in the value of the securities in respect of which the repo is made as security for performance by the parties to the repo of their obligations under it.
- (3) In this section “repo” has the same meaning as in Part 11 (see section 569).

## **870 Other investments**

- (1) An investment with a deposit-taker is not a relevant investment if—
  - (a) it is a loan made by a deposit-taker in the ordinary course of its business or activities,
  - (b) it is a debt on a security which is listed on a recognised stock exchange, or
  - (c) it is a debt on a debenture issued by the deposit-taker (see section 1022).
- (2) An investment with a building society is not a relevant investment if—
  - (a) it is a loan made by a bank (as defined in section 991), or
  - (b) it is a security (including a share) issued by a building society which is listed, or capable of being listed, on a recognised stock exchange.

## *Supplementary*

## **871 Power to make regulations to give effect to Chapter**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision—
  - (a) about the giving of information by deposit-takers, building societies and appropriate persons,
  - (b) about the inspection of deposit-takers' and building societies' books, documents and other records by officers of Revenue and Customs, and
  - (c) generally for giving effect to this Chapter.
- (2) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (3) In this section “appropriate person” means a person who, in relation to an investment, falls within any of the following—
  - (a) section 858(5),
  - (b) section 859(5),
  - (c) section 860(4), or
  - (d) section 861(5).

## **872 Power to make orders amending Chapter**

- (1) The Treasury may by order amend this Chapter for the purposes of providing that investments of a kind specified in the order are, or are not, relevant investments.

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- (2) An order under this section which amends this Chapter in its application to deposit-takers may do so—
  - (a) in relation to all deposit-takers, or
  - (b) in relation to such deposit-takers or classes of deposit-taker as the order may specify.
- (3) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) An order under this section may not amend section 852 (power to make regulations disapplying section 851).
- (5) An order under this section may not amend section 870(2)(b) for the purpose of providing that securities of the kind mentioned in that provision are relevant investments.

### **873 Discretionary or accumulation settlements**

- (1) A settlement is a discretionary or accumulation settlement for the purposes of this Chapter if any income arising to the trustees would (unless treated as income of the settlor) be to any extent income within subsection (2) for the tax year in which it arises.
- (2) Income is within this subsection so far as it is—
  - (a) accumulated or discretionary income as defined in section 480 (other than income arising under a trust established for charitable purposes only or an unauthorised unit trust in relation to which section 504 applies), or
  - (b) an amount of a type set out in section 482 (unless the trust is a unit trust scheme or the amount is income arising under a trust established for charitable purposes only or is excluded by section 481(5)).
- (3) A person is a beneficiary under a discretionary or accumulation settlement for the purposes of this Chapter if—
  - (a) the person is an actual or potential beneficiary under the settlement, and
  - (b) condition A or B is met in relation to the person.
- (4) Condition A is that the person is, or will or may become, entitled under the settlement to receive some or all of any income under the settlement.
- (5) Condition B is that some or all of any income under the settlement may be paid to or used for the benefit of the person in the exercise of a discretion conferred under the settlement.
- (6) The references in subsections (4) and (5) to any income under the settlement include a reference to any capital under the settlement so far as it represents amounts originally received by the trustees as income.

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## CHAPTER 3

### DEDUCTION FROM CERTAIN PAYMENTS OF YEARLY INTEREST

#### *Duty to deduct sums representing income tax*

#### **874 Duty to deduct from certain payments of yearly interest**

- (1) This section applies if a payment of yearly interest arising in the United Kingdom is made—
  - (a) by a company,
  - (b) by a local authority,
  - (c) by or on behalf of a partnership of which a company is a member, or
  - (d) by any person to another person whose usual place of abode is outside the United Kingdom.
- (2) The person by or through whom the payment is made must, on making the payment, deduct from it a sum representing income tax on it at the savings rate in force for the tax year in which it is made.
- (3) But see—
  - (a) sections 875 to 888 as to circumstances in which the duty to deduct a sum under this section is disapplied, and
  - (b) Chapter 11 (payments between companies etc) for a further exception from the duty to deduct under this section.
- (4) See also regulations made under section 17(3) of F(No.2)A 2005 (authorised investment funds)—
  - (a) for provision treating certain amounts shown in the distribution accounts of authorised investment funds as payments of yearly interest, and
  - (b) for exceptions from the duty to deduct under this section which would otherwise apply to such payments.
- (5) For the purposes of subsection (1) the following are to be treated as payments of yearly interest—
  - (a) a payment of interest made by a registered industrial and provident society in respect of any mortgage, loan, loan stock or deposit, and
  - (b) any interest, dividend, bonus or other sum payable to a shareholder of such a society by reference to the amount of the shareholder's holding in the share capital of the society.
- (6) For the purposes of subsection (1)—
  - (a) a payment made by a company in a fiduciary or representative capacity is not to be treated as a payment made by the company, and
  - (b) a payment made by a local authority in a fiduciary or representative capacity is not to be treated as a payment made by the local authority.
- (7) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.



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**Modifications etc. (not altering text)**

- C4** S. 874 applied by S.I. 2006/964, reg. 69Z23(2) (as inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5)

*Exceptions from duty to deduct*

**875 Interest paid by building societies**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest made by a building society.

**876 Interest paid by deposit-takers**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest in respect of which a deposit-taker has a duty to deduct under section 851.
- (2) The duty to deduct a sum representing income tax under section 874 does not apply to a payment in respect of which a deposit-taker would have a duty to deduct under section 851 but for—
  - (a) regulations under section 852, or
  - (b) any of sections 858 to 861.

**877 UK public revenue dividends**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest in respect of a UK public revenue dividend.

**878 Interest paid by banks**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest made by a bank if that payment is made in the ordinary course of its business.
- (2) Section 991 (meaning of “bank”) applies for the purposes of this section.

**879 Interest paid on advances from banks**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on an advance from a bank if, at the time when the payment is made, the person beneficially entitled to the interest is within the charge to corporation tax as respects the interest.
- (2) Section 991 (meaning of “bank”) applies for the purposes of this section.
- (3) Subsection (1) applies to the European Investment Bank as if the words from “if” to the end were omitted.
- (4) An order under subsection (2)(e) of section 991 designating an international organisation as a bank may provide that subsection (1) applies to the organisation with the modification mentioned in subsection (3).

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### **880 Interest paid on advances from building societies**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on an advance from a building society.

### **881 National Savings Bank interest**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on deposits with the National Savings Bank.

### **882 Quoted Eurobond interest**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on a quoted Eurobond (see section 987).

### **883 Interest on loan to buy life annuity**

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest to which section 369 of ICTA applies (interest on loan to buy life annuity payable under deduction of tax).

### **884 Relevant foreign income**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest which is chargeable to income tax as relevant foreign income.
- (2) For the meaning of “relevant foreign income”, see section 989.

### **885 Authorised persons dealing in financial instruments**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest made by a person authorised for the purposes of FISMA 2000 if—
  - (a) the person's business consists wholly or mainly of dealing in financial instruments as principal, and
  - (b) the payment is made by that person in the ordinary course of that business.
- (2) For the meaning of “financial instrument”, see section 984.

### **886 Interest paid by recognised clearing houses etc**

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest made by a recognised clearing house (“RCH”) or recognised investment exchange (“RIE”) if—
  - (a) the RCH or RIE is carrying on business as the provider of a central counterparty clearing service, and
  - (b) the interest is paid in the ordinary course of that business, on margin or other collateral deposited with it by users of the service.
- (2) The duty to deduct a sum representing income tax under section 874 does not apply to interest treated by virtue of section 607 (treatment of price differences under repos)<sup>F124</sup>, or paragraph 5 of Schedule 13 to FA 2007 (relief for borrower for finance charges in

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case of debtor repos and debtor quasi-repos),] as paid by an RCH or RIE in respect of contracts made by it as the provider of a central counterparty clearing service.

(3) In this section—

“central counterparty clearing service” means the service provided by an RCH or RIE to the parties to a transaction where there are contracts between each of the parties and the RCH or RIE (in place of, or as an alternative to, a contract directly between the parties), and

“recognised clearing house” and “recognised investment exchange” have the same meaning as in FISMA 2000 (see section 285 of that Act).

#### Textual Amendments

**F124** Words in s. 886(2) inserted (with effect in accordance with art. 3 of the commencing S.I.) by [Finance Act 2007 \(c. 11\)](#), s. 47(4), [Sch. 14 para. 24](#); S.I. 2007/2483, art. 3

### 887 Industrial and provident society payments

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to either of the following payments if they are payable to a person whose usual place of abode is in the United Kingdom—
  - (a) a payment of interest made by a registered industrial and provident society in respect of any mortgage, loan, loan stock or deposit, or
  - (b) any interest, dividend, bonus or other sum payable to a shareholder of such a society by reference to the amount of the shareholder's holding in the share capital of the society.
- (2) A registered industrial and provident society must, within 3 months after the end of each of its accounting periods, deliver to an officer of Revenue and Customs a return containing the information mentioned in subsection (3).
- (3) That information is—
  - (a) the name and place of residence of every person to whom the society has, as a result of this section, made one or more payments in the period amounting in total to at least £15 without deducting a sum (or sums) representing income tax, and
  - (b) the amount so paid in the period to each of those persons.
- (4) See section 486(7) of ICTA as to the consequences of not making a return as required by subsection (2).
- (5) In this Chapter “registered industrial and provident society” means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 (c. 12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)).
- (6) For the purposes of this section crediting interest (or amounts treated as interest) counts as paying it.

### 888 Statutory interest

The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest made by virtue of the contractual term implied by section 1(1) of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) (statutory interest).

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## CHAPTER 4

### DEDUCTION FROM PAYMENTS IN RESPECT OF BUILDING SOCIETY SECURITIES

#### 889 Payments in respect of building society securities

- (1) This section applies to any payment made in a tax year if—
  - (a) it is a payment of a dividend or interest in respect of a security issued by a building society, and
  - (b) conditions A and B are met in relation to the security.
- (2) Condition A is that the security was listed or capable of being listed on a recognised stock exchange at the time the dividend or interest became payable.
- (3) Condition B is that the security is not—
  - (a) a qualifying certificate of deposit (see section 985),
  - (b) a qualifying uncertificated eligible debt security unit (see section 986), or
  - (c) a quoted Eurobond (see section 987).
- (4) The person by or through whom the payment is made must, on making it, deduct from it a sum representing income tax on it at the savings rate in force for the tax year.
- (5) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.
- (6) See also Chapter 11 (payments between companies) for an exception from the duty to deduct sums representing income tax under this section.
- (7) In this section—
 

“dividend” includes any distribution (whether or not described as a dividend), and

“security” includes a share (and, in particular, a permanent interest bearing share as defined in section 117 of TCGA 1992).

## CHAPTER 5

### DEDUCTION FROM PAYMENTS OF UK PUBLIC REVENUE DIVIDENDS

#### *Introduction*

#### 890 Overview of Chapter

- (1) This Chapter contains provision about the deduction of sums representing income tax from payments of UK public revenue dividends.
- (2) Section 891 defines “UK public revenue dividend”.
- (3) Section 892 contains a duty to deduct sums representing income tax from payments of UK public revenue dividends unless they are payable gross.

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- (4) Sections 893 and 894 explain when such payments are payable gross.
- (5) Sections 895 and 896 make provision for the making, and withdrawal, of applications for payments to be subject to the duty to deduct under this Chapter.
- (6) Section 897 contains a regulation-making power in connection with payments from which sums must be deducted under this Chapter.

## **891 Meaning of “UK public revenue dividend”**

In this Chapter “UK public revenue dividend” means any income from securities which—

- (a) is paid out of the public revenue of the United Kingdom or Northern Ireland, but
- (b) is not interest on local authority stock.

*Duty to deduct sums representing income tax*

## **892 Duty to deduct from certain UK public revenue dividends**

- (1) This section has effect if—
  - (a) a payment of a UK public revenue dividend is made, and
  - (b) it is not payable gross under section 893.
- (2) The person by or through whom the payment is made must, on making the payment, deduct from it a sum representing income tax on it at the savings rate in force for the tax year in which it is made.
- (3) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.

*Payments which are payable gross*

## **893 Payments of UK public revenue dividends which are payable gross**

- (1) A payment of a UK public revenue dividend is payable gross if—
  - (a) it is a payment of interest on gross-paying government securities, and
  - (b) no deduction at source application has effect in respect of the securities at the time the payment is made (see section 895).
- (2) In this Chapter “gross-paying government securities” means—
  - (a) gilt-edged securities (see section 1024), or
  - (b) securities which are the subject of a Treasury direction under section 894(1) or (3).

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## **894 Treasury directions**

- (1) The Treasury may direct that any securities to which subsection (2) applies are gross-paying government securities.
- (2) This subsection applies to any securities, so far as they are not gilt-edged securities, issued or treated as issued under—
  - (a) the National Loans Act 1939 (c. 117), or
  - (b) the National Loans Act 1968 (c. 13).
- (3) The Treasury may, at the request of the Department of Finance and Personnel for Northern Ireland, direct that any securities issued under section 11(1)(c) of the Exchequer and Financial Provisions Act (Northern Ireland) 1950 (c. 3 (N.I.)) are gross-paying government securities.
- (4) In relation to any securities which are gross-paying government securities by virtue of a direction under subsection (3)—
  - (a) references in sections 895 and 896 to “the Registrar” are to be read as references to the bank in the books of which the securities are registered or inscribed, and
  - (b) references in those sections to the Treasury are to be read as references to the Department of Finance and Personnel for Northern Ireland.
- (5) A direction under subsection (1) or (3) in respect of any securities may provide that the direction is to have effect in relation only to payments of interest on the securities made on or after a date specified in the direction.

### *Deduction at source applications*

## **895 Deduction at source application**

- (1) The holder of registered gross-paying government securities may make a deduction at source application in respect of the securities.
- (2) A deduction at source application in respect of any securities is an application—
  - (a) for payments of interest on those securities to be subject to the duty to deduct sums representing income tax under section 892,
  - (b) made to the Registrar, and
  - (c) made in such form as the Registrar may, with the approval of the Treasury, prescribe.
- (3) A deduction at source application in respect of any securities has effect from the date which is one month after the date on which it is made until—
  - (a) the securities cease to be registered in the name of the person who made the application, or
  - (b) the application ceases to have effect under section 896 following its withdrawal in accordance with that section.
- (4) If any registered gross-paying government securities are held on trust, the holders of the securities may make a deduction at source application in respect of them without the consent of any other person.
- (5) Subsection (4) applies despite anything in the instrument creating the trust.

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(6) In this Chapter—

“registered” means—

- (a) entered in the register of the Registrar, or
- (b) entered in a register maintained in accordance with regulations under [F125section 785 of the Companies Act 2006 (provision enabling procedures for evidencing and transferring title),] and

“the Registrar” means the person or persons appointed in accordance with regulations under section 47(1)(b) of FA 1942 (see regulation 3 of the Government Stock Regulations 2004 (S.I. 2004/1611)).

**Textual Amendments**

**F125** Words in s. 895(6) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **40** (with art. 4)

**896 Withdrawal of application**

- (1) A deduction at source application may be withdrawn by notice given to the Registrar by the holder of the securities.
- (2) The notice must be given in such form as the Registrar may, with the approval of the Treasury, prescribe.
- (3) If withdrawn, a deduction at source application ceases to have effect on the date which is one month after the date on which the notice of withdrawal is received by the Registrar.

*Regulations*

**897 Power to make regulations**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
  - (a) make provision as to the time and manner in which persons are to account for and pay income tax in respect of payments from which they are required to deduct sums representing income tax under section 892, and
  - (b) otherwise modify the provisions of section 892 and Chapters 15 and 16 in their application to such payments.
- (2) Regulations under this section may—
  - (a) make different provision for different descriptions of UK public revenue dividend and for different circumstances, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (3) The Commissioners for Her Majesty's Revenue and Customs must not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

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## CHAPTER 6

### DEDUCTION FROM ANNUAL PAYMENTS AND PATENT ROYALTIES

#### Introduction

#### 898 Overview of Chapter

- (1) This Chapter deals with the deduction of sums representing income tax from—
  - (a) qualifying annual payments, and
  - (b) royalties or other sums paid in respect of the use of patents.
- (2) See also—
  - (a) Chapter 11 (payments between companies etc) for an exception from the duties to deduct sums representing income tax under this Chapter,
  - (b) Chapter 4 of Part 8, which gives relief for certain payments from which sums representing income tax must be deducted under this Chapter, and
  - (c) section 615(3) of ICTA (exemption from tax in respect of certain pensions) which contains a further exception from the duties to deduct sums representing income tax under this Chapter.
- (3) If a payment to which a provision of this Chapter applies is also one to which section 906 applies, it is treated as not being a payment to which a provision of this Chapter applies.

#### 899 Meaning of “qualifying annual payment”

- (1) In this Chapter “qualifying annual payment” means an annual payment that meets the conditions in subsections (2) to (5).
- (2) The payment must arise in the United Kingdom.
- (3) If the recipient is a person other than a company, the payment must be—
  - (a) a payment charged to income tax under—
    - (i) Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments),
    - (ii) section 579 of that Act (royalties etc from intellectual property),
    - (iii) Chapter 4 of Part 5 of that Act (certain telecommunication rights: non-trading income), or
    - (iv) Chapter 7 of Part 5 of that Act (annual payments not otherwise charged), or
  - (b) a payment charged to income tax under Part 9 of ITEPA 2003 because section 609 or 611 of that Act applies to it (certain employment-related annuities).
- (4) If the recipient is a company, the payment must be—
  - (a) a payment charged to income tax as mentioned in subsection (3)(a), or
  - (b) a payment charged to corporation tax under Case III of Schedule D.
- (5) The payment must not be—
  - (a) interest,



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- (b) a qualifying donation as defined in section 339 of ICTA (donations to charity by companies),
- (c) a payment which is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid),
- (d) a payment in relation to which income tax is treated as having been paid under section 494(3) (income tax treated as paid by beneficiary or settlor in relation to discretionary trust),
- (e) a payment which would fall within paragraph (d) but for the fact that the trustees making the payment are non-UK resident, or
- (f) an annual payment to which section 904 applies (annual payments for dividends or non-taxable consideration).

#### *Duty to deduct from annual payments*

### **900 Deduction from commercial payments made by individuals**

- (1) This section applies to any payment made in a tax year if—
  - (a) it is a qualifying annual payment,
  - (b) the person who makes it is an individual, and
  - (c) it is made for genuine commercial reasons in connection with the individual's trade, profession or vocation.
- (2) The individual must, on making the payment, deduct from it a sum representing income tax on it at the basic rate in force for the tax year.
- (3) Income tax equal to the sum required to be deducted is to be collected through the individual's self-assessment return (see Chapter 17).

### **901 Deduction from annual payments made by other persons**

- (1) This section applies to any payment made in a tax year if—
  - (a) it is a qualifying annual payment, and
  - (b) the person who makes it is not an individual.
- (2) But this section does not apply if—
  - (a) an individual's personal representatives make the payment,
  - (b) the individual would have been liable to make it if the individual had not died, and
  - (c) the payment would not have been made for genuine commercial reasons in connection with the individual's trade, profession or vocation, had it been made by the individual.
- (3) If the person who makes the payment has some modified net income for the tax year (see section 1025)—
  - (a) the person must, on making it, deduct from it a sum representing income tax on it at the basic rate in force for the tax year, and
  - (b) income tax equal to the sum required to be deducted is to be collected through the person's self-assessment return (see Chapter 17).

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- (4) If the person who makes the payment has no modified net income for the tax year the person by or through whom the payment is made must, on making it, deduct from it a sum representing income tax on it at the applicable rate (see section 902).
- (5) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under subsection (4)—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.

## **902 Meaning of “applicable rate” in section 901**

- (1) This section gives the meaning of “applicable rate” in section 901(4).
- (2) Except in the case dealt with in subsection (3), the applicable rate is the basic rate in force for the tax year in which the payment is made.
- (3) If the payment—
  - (a) is an annuity payment under a purchased life annuity, and
  - (b) meets the condition in subsection (4),
 the applicable rate is the savings rate in force for the tax year in which the payment is made.
- (4) The condition is that the payment either—
  - (a) is savings income, or
  - (b) would be savings income, if it were the income of an individual within the charge to income tax.
- (5) In this section “purchased life annuity” has the meaning given by section 423 of ITTOIA 2005.

### *Duty to deduct from patent royalties*

## **903 Deduction from patent royalties**

- (1) This section applies to any payment made in a tax year if—
  - (a) it is a payment of a royalty or other sum in respect of the use of a patent, and
  - (b) it meets the conditions in subsections (2) to (4).
- (2) The payment must not be—
  - (a) a qualifying annual payment, or
  - (b) an annual payment to which section 904 applies (annual payments for dividends or non-taxable consideration).
- (3) The payment must arise in the United Kingdom.
- (4) The payment must be one that is charged to income tax or corporation tax.
- (5) If the person who makes the payment is an individual—
  - (a) the person must, on making the payment, deduct from it a sum representing income tax on it at the basic rate in force for the tax year, and

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- (b) income tax equal to the sum required to be deducted is to be collected through the person's self-assessment return (see Chapter 17).
- (6) If the person who makes the payment is not an individual, and has some modified net income for the tax year (see section 1025)—
  - (a) the person must, on making the payment, deduct from it a sum representing income tax on it at the basic rate in force for the tax year, and
  - (b) income tax equal to the sum required to be deducted is to be collected through the person's self-assessment return (see Chapter 17).
- (7) If the person who makes the payment—
  - (a) is not an individual, and
  - (b) has no modified net income for the tax year,the person by or through whom the payment is made must, on making it, deduct from it a sum representing income tax on it at the basic rate in force for the tax year.
- (8) See Chapter 8 which makes special provision in relation to royalties (double taxation arrangements: deduction at treaty rate and EU companies: discretion to pay gross).
- (9) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under subsection (7)—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.

### *Supplementary*

## **904 Annual payments for dividends or non-taxable consideration**

- (1) For the purposes of section 899(5)(f) and 903(2)(b) this section applies to an annual payment which meets the conditions in subsections (2) to (7).
- (2) The payment must be a payment charged to—
  - (a) income tax under Part 5 of ITTOIA 2005, or
  - (b) corporation tax under Case III of Schedule D.
- (3) The payment must be made under a liability incurred for consideration in money or money's worth all or any of which—
  - (a) consists of a dividend or the right to receive a dividend, or
  - (b) is not required to be brought into account in calculating for the purposes of income tax or corporation tax the income of the person making the payment.
- (4) The payment must not be a payment of income—
  - (a) which arises under a settlement made by one party to a marriage or civil partnership by way of provision for the other—
    - (i) after the dissolution or annulment of the marriage or civil partnership, or
    - (ii) while they are separated under an order of a court, or under a separation agreement, or if the separation is likely to be permanent, and
  - (b) which is payable to, or applicable for the benefit of, the other party.

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- (5) The payment must not be made by an individual for genuine commercial reasons in connection with the individual's trade, profession or vocation.
- (6) The payment must not be made to an individual under a liability incurred at any time in consideration of the individual surrendering, assigning or releasing an interest in settled property to or in favour of a person with a subsequent interest.
- (7) The payment must not be a payment of an annuity granted in the ordinary course of a business of granting annuities.
- (8) In the application of this section to Scotland the reference in subsection (6) to settled property is to be read as a reference to property held in trust.

## 905 Interpretation of Chapter

In this Chapter “individual” includes a Scottish partnership if at least one partner is an individual.

## CHAPTER 7

### DEDUCTION FROM OTHER PAYMENTS CONNECTED WITH INTELLECTUAL PROPERTY

*Certain royalties etc where usual place of abode of owner is abroad*

## 906 Certain royalties etc where usual place of abode of owner is abroad

- (1) This section applies to any payment made in a tax year if—
  - (a) it is a payment of any royalties, or sums payable periodically, in respect of a relevant intellectual property right (see section 907),
  - (b) it is one that is charged to income tax or corporation tax, and
  - (c) condition A or B is met.
- (2) Condition A is that the usual place of abode of the owner of the right is outside the United Kingdom.
- (3) Condition B is that—
  - (a) a person (“the seller”) has assigned the right to another person,
  - (b) the usual place of abode of the seller is outside the United Kingdom,
  - (c) the seller is entitled to periodical payments in respect of the right, and
  - (d) the payments are in respect of that entitlement.
- (4) But this section does not apply if the payment is made in respect of copies of works, or articles, which have been exported from the United Kingdom for distribution outside the United Kingdom.
- (5) The person by or through whom the payment is made must, on making it, deduct from it a sum representing income tax on it at the basic rate in force for the tax year.
- (6) See—
  - (a) Chapter 8 which makes special provision in relation to royalties (double taxation arrangements: deduction at treaty rate and EU companies: discretion to pay gross), and

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- (b) Chapter 11 (payments between companies etc) for an exception from the duty to deduct sums representing income tax under this section.
- (7) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.
- (8) If a payment to which this section applies is also one to which a provision of Chapter 6 applies, it is treated as not being a payment to which a provision of Chapter 6 applies.

## **907 Meaning of “relevant intellectual property right”**

- (1) In section 906 “a relevant intellectual property right” means—
  - (a) a copyright,
  - (b) a right in a design, or
  - (c) the public lending right in respect of a book.
- (2) In this section—
  - “copyright” does not include copyright in—
    - (a) a cinematographic film or video recording, or
    - (b) the sound-track of a cinematographic film or video recording, except so far as it is separately exploited,
  - “a right in a design” means the design right in a design, or the right in a registered design.

## **908 Royalty payments etc made through UK resident agents**

- (1) If—
  - (a) a payment to which section 906 applies is made through an agent who is UK resident, and
  - (b) the agent is entitled as against the owner of the right to deduct a sum as commission for services provided,section 906(5) and Chapters 8 (deduction at special rates), 15 and 16 (collection) apply as if the amount of the payment were the amount net of the sum deductible as commission.
- (2) But if the person by or through whom the payment is made does not know the commission is payable, or does not know its amount—
  - (a) the sum representing income tax required to be deducted under section 906 must be calculated in the first instance on the total amount of the payment, and
  - (b) the return to be made under Chapter 15 or the account of the payment under Chapter 16, must be based on that total amount.

## **909 Royalty payments: further provision**

- (1) A payment to which section 906 applies is treated for all income and corporation tax purposes as made when it is made by the first person who makes it, not when it is made by or through any other person.

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- (2) If, under section 906, a sum representing income tax must be deducted from a payment, any agreement to make the payment without deduction of that sum is void.
- (3) Section 906—
  - (a) applies to payments on account of royalties as it applies to payments of royalties, and
  - (b) applies to payments on account of sums payable periodically as it applies to payments of sums payable periodically.

### *Proceeds of a sale of patent rights*

## **910 Proceeds of a sale of patent rights: payments to non-UK residents**

- (1) This section applies if a non-UK resident sells the whole or part of any patent rights and is chargeable in respect of the sale—
  - (a) to income tax under section 587 of ITTOIA 2005, or
  - (b) to corporation tax under section 524(3) of ICTA.
- (2) The person by or through whom the proceeds of the sale are paid must, on making any payment of—
  - (a) the proceeds, or
  - (b) an instalment of the proceeds,deduct from it a sum representing income tax on the chargeable amount at the basic rate in force for the tax year in which the payment is made.
- (3) In subsection (2) “the chargeable amount” means—
  - (a) so much of the proceeds or instalment as consists of a capital sum, less
  - (b) any incidental expenses of the sale which are deducted before payment.
- (4) Sections 597 to 599 of ITTOIA 2005 (licences connected with patents etc) apply for the purposes of this section as they apply for the purposes of sections 587 to 596 of that Act.
- (5) Section 4 of CAA 2001 (meaning of “capital sums” etc) applies in relation to this section as it applies in relation to that Act.
- (6) For further provision about the sum required to be deducted, see—
  - (a) section 595 of ITTOIA 2005 (certain rules affecting the seller's income tax position do not affect the amount to be deducted), and
  - (b) section 524(9) of ICTA (certain rules affecting the seller's corporation tax position do not affect the amount to be deducted).
- (7) See Chapter 11 (payments between companies etc) for an exception from the duty to deduct sums representing income tax under this section.
- (8) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.

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## CHAPTER 8

### CHAPTERS 6 AND 7: SPECIAL PROVISION IN RELATION TO ROYALTIES

#### *Deduction at special rates*

#### **911 Double taxation arrangements: deduction at treaty rate**

- (1) This section applies if—
  - (a) a company pays a royalty from which it is required to deduct a sum representing income tax under Chapter 6 or 7,
  - (b) the income tax in respect of the payment is collectible under Chapter 15 or 16, and
  - (c) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under double taxation arrangements.
- (2) The company may calculate the sum to be deducted from the payment under Chapter 6 or 7 by reference to the treaty rate.
- (3) But, if the payee is not at the time entitled to such relief, this Part has effect as if subsection (2) had never applied in relation to the payment.
- (4) In this section “the treaty rate” means the rate of income tax appropriate to the payee under the arrangements.

#### **912 Power to make directions disapplying section 911**

- (1) This section applies if an officer of Revenue and Customs is not satisfied that the payee will be entitled to relief under double taxation arrangements in respect of one or more payments of royalties that a company is to make.
- (2) The officer may direct the company that section 911 is not to apply to the payment or payments.
- (3) A direction under subsection (2) may be varied or revoked by a later direction.

#### **913 Interpretation of sections 911 and 912**

- (1) In sections 911 and 912 “royalty” includes—
  - (a) a payment received as consideration for the use of, or the right to use, a copyright, patent, trade mark, design, process or information, and
  - (b) the proceeds of the sale of the whole or part of any patent rights.
- (2) In sections 911 and 912 “payee” means the person beneficially entitled to the income in respect of which the payment is made.

#### *Discretion to make payments gross*

#### **914 EU companies: discretion to make payment gross**

- (1) This section applies if—

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- (a) a company makes a royalty payment and, at the time the payment is made, the company reasonably believes that the payment is exempt from income tax as a result of section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments), but
  - (b) there is a duty to deduct a sum representing income tax from the payment under section 903(7) or 906 if the payment is not in fact exempt.
- (2) The company may make the payment without deducting a sum representing income tax under section 903(7) or 906 (as the case may be).
- (3) But if the payment is not in fact exempt from income tax as a result of section 758 of ITTOIA 2005, this Part has effect as if subsection (2) had never applied in relation to the payment.

## **915 Power to make directions disapplying section 914**

- (1) This section applies if an officer of Revenue and Customs is not satisfied that one or more payments to be made by a company will be exempt from income tax as a result of section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments).
- (2) The officer may direct the company that section 914 is not to apply to the payment or payments.
- (3) A direction under subsection (2) may be varied or revoked by a later direction.

## **916 Duty of payee to notify if payment not exempt**

- (1) This section applies 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 the payment was exempt from income tax as a result of section 758 of ITTOIA 2005 (exemption for certain interest and royalty payments), but
  - (b) has subsequently become aware that any of conditions A to C in that section have ceased to be met.
- (2) The company must without delay notify—
  - (a) an officer of Revenue and Customs, and
  - (b) the company which is to make the payment.

## **917 Supplementary**

- (1) If section 763 of ITTOIA 2005 (special relationships) applies, sections 914 to 916 have effect in relation to only so much of the payment as does not exceed the arm's length amount (within the meaning of that section).
- (2) Expressions used in sections 914 to 916 and in sections 757 to 767 of ITTOIA 2005 have the same meaning in sections 914 to 916 as in those sections.



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## CHAPTER 9

### MANUFACTURED PAYMENTS

#### Modifications etc. (not altering text)

- C5** Pt. 15 Ch. 9 modified (with effect in accordance with art. 2 of the commencing S.I.) by [Finance Act 2007 \(c. 11\)](#), s. 47(4), [Sch. 13 para. 13](#); S.I. 2007/2483, art. 2

#### *Manufactured dividends*

### **918 Manufactured dividends on UK shares: Real Estate Investment Trusts**

- (1) This section applies if—
  - (a) a person pays a manufactured dividend as mentioned in section 573(1), and
  - (b) the manufactured dividend is representative of a dividend which is—
    - (i) paid by a company to which Part 4 of FA 2006 applies (Real Estate Investment Trusts) in respect of profits of C (tax-exempt), or
    - (ii) paid by the principal company of a group to which that Part applies in respect of profits of G (property rental business).
- (2) This section applies only so far as the manufactured dividend is representative of such a dividend.
- (3) If the payer—
  - (a) is UK resident, or
  - (b) pays the manufactured dividend in the course of a trade carried on through a branch or agency in the United Kingdom,regulations under section 973 apply to the payer as they apply to a company to which Part 4 of FA 2006 applies, with any necessary modifications.
- (4) The Treasury may by regulations provide, in a case where the payer—
  - (a) is non-UK resident, and
  - (b) pays the manufactured dividend otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom,for a United Kingdom recipient of the manufactured dividend to be liable to account for and pay income tax in respect of it.
- (5) A United Kingdom recipient is a recipient who—
  - (a) is UK resident, or
  - (b) is non-UK resident but receives the manufactured dividend for the purposes of a trade carried on by the recipient through a branch or agency in the United Kingdom.
- (6) The amount of income tax which the recipient may be liable to account for and pay under regulations under subsection (4) is equal to the amount of the sum representing income tax which the payer would have been required to deduct in accordance with regulations under section 973.
- (7) For the purposes of—
  - (a) regulations under section 973 as applied by subsection (3), and

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(b) regulations under subsection (4),  
 the “gross amount” of a manufactured dividend to which this section applies is equal to the gross amount of the dividend of which it is representative.

### *Manufactured interest*

## **919 Manufactured interest on UK securities: payments by UK residents etc**

- (1) This section applies if a person who pays manufactured interest as mentioned in section 578(1)—
  - (a) is UK resident, or
  - (b) pays the manufactured interest in the course of a trade carried on in the United Kingdom through a branch or agency.
- (2) The payer of the manufactured interest must, on making the payment, deduct from the gross amount of the manufactured interest a sum representing income tax on it at the savings rate in force for the tax year in which the payment is made.
- (3) The “gross amount” of manufactured interest is equal to the gross amount of the interest of which it is representative.
- (4) This section is subject (in particular) to—
  - section 583 (manufactured payments exceeding underlying payments),
  - section 585 (manufactured payments: power to deal with special cases),
  - section 921 (cases where interest on underlying securities paid gross), and
  - Chapter 11 (payments between companies etc: exception from duties to deduct).
- (5) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the payer of the manufactured interest is a company, and
  - (b) otherwise see Chapter 16.

## **920 Foreign payers of manufactured interest: the reverse charge**

- (1) This section applies if a person who pays manufactured interest as mentioned in section 578(1)—
  - (a) is non-UK resident, and
  - (b) pays the manufactured interest otherwise than in the course of a trade carried on in the United Kingdom through a branch or agency.
- (2) The recipient must account for and pay income tax in respect of the manufactured interest if the recipient—
  - (a) is UK resident, or
  - (b) is non-UK resident but receives the manufactured interest for the purposes of a trade carried on by the recipient in the United Kingdom through a branch or agency.
- (3) The amount of income tax to be accounted for and paid is equal to the amount of the sum representing income tax which the payer would have been required to deduct under section 919(2) if the payer had been UK resident.

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- (4) If the payer would not have been required to deduct any sum under section 919(2), the recipient is not required to account for and pay any income tax under this section.
- (5) For examples of cases in which subsection (4) applies see (in particular)—  
section 921 (cases where interest on underlying securities paid gross), and  
Chapter 11 (payments between companies etc: exception from duties to deduct).
- (6) This section is subject to—  
section 583 (manufactured payments exceeding underlying payments), and  
section 585 (manufactured payments: power to deal with special cases).
- (7) Provision about the collection of income tax required to be accounted for and paid under this section may be included in regulations under section 586.

## **921 Cases where interest on underlying securities paid gross**

- (1) This section applies to manufactured interest which is representative of interest on—
  - (a) gilt-edged securities, or
  - (b) securities which are not gilt-edged securities but on which the interest is payable without deduction of income tax.
- (2) Section 919(2) does not require any deduction of a sum representing income tax to be made on the payment of the manufactured interest.
- (3) In this section “securities” includes loan stock or any similar security.

### *Manufactured overseas dividends*

## **922 Manufactured overseas dividends: payments by UK residents etc**

- (1) This section applies if a person who pays a manufactured overseas dividend as mentioned in section 581(1)—
  - (a) is UK resident, or
  - (b) pays the manufactured overseas dividend in the course of a trade carried on through a branch or agency in the United Kingdom.
- (2) The payer of the manufactured overseas dividend must, on making the payment, deduct from the gross amount of the manufactured overseas dividend a sum representing income tax equal to the relevant withholding tax on the gross amount.
- (3) This section is subject (in particular) to—  
section 583 (manufactured payments exceeding underlying payments), and  
section 585 (manufactured payments: power to deal with special cases).
- (4) Provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section may be included in regulations under section 586 or 925.

## **923 Foreign payers of manufactured overseas dividends: the reverse charge**

- (1) This section applies if a person who pays a manufactured overseas dividend as mentioned in section 581(1)—

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- (a) is non-UK resident, and
  - (b) pays the manufactured overseas dividend otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom.
- (2) The recipient must account for and pay income tax in respect of the manufactured overseas dividend if the recipient—
  - (a) is UK resident, or
  - (b) is non-UK resident but receives the manufactured overseas dividend for the purposes of a trade carried on by the recipient through a branch or agency in the United Kingdom.
- (3) The amount of income tax to be accounted for and paid is equal to the amount of the sum representing income tax which the payer would have been required to deduct under section 922(2) if the payer had been UK resident.
- (4) If the payer would not have been required to deduct any sum under section 922(2), the recipient is not required to account for and pay any income tax under this section.
- (5) This section is subject to—
  - section 583 (manufactured payments exceeding underlying payments),
  - section 585 (manufactured payments: power to deal with special cases), and
  - section 924 (power to reduce liability under this section).
- (6) Provision about the collection of income tax required to be accounted for and paid under this section may be included in regulations under section 586.

## **924 Power to reduce section 923 liability**

- (1) The Treasury may by regulations provide for a reduction in the amount of tax to be accounted for and paid as a result of section 923.
- (2) The reduction must be a reduction, to such extent and for such purposes as may be determined under the regulations, by reference to amounts of overseas tax charged on, or in respect of—
  - (a) the making of the manufactured overseas dividend, or
  - (b) the overseas dividend of which the manufactured overseas dividend is representative.

## **925 Power to provide set-off entitlement**

- (1) The Treasury may by regulations provide for a person who, in any prescribed period, pays a manufactured overseas dividend as mentioned in section 581(1) to be entitled—
  - (a) to set off relevant amounts of tax suffered against relevant tax liabilities, and
  - (b) to account to the Commissioners for Her Majesty's Revenue and Customs for the balance or claim credit in respect of it.
- (2) Regulations under this section may—
  - (a) prescribe the circumstances in which relevant amounts of tax suffered may be set off against relevant tax liabilities, and
  - (b) provide for relevant amounts of tax suffered to be set off against relevant tax liabilities in accordance with the regulations and so far as prescribed.
- (3) “Relevant amounts of tax suffered” are—

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- (a) amounts of overseas tax in respect of overseas dividends received by the person in the prescribed period,
  - (b) amounts of overseas tax charged on, or in respect of, the making of manufactured overseas dividends received by the person in the prescribed period, and
  - (c) amounts—
    - (i) deducted as a result of section 922, or
    - (ii) accounted for and paid as a result of section 923,from any manufactured overseas dividends received by the person in the prescribed period.
- (4) “Relevant tax liabilities” are sums due from the person on account of the amounts deducted by the person as a result of section 922 from the manufactured overseas dividends paid by the person in the prescribed period.
- (5) In this section—  
“credit” includes credit against corporation tax, and  
“prescribed” means prescribed in regulations under this section.

### *Supplementary*

## **926 Interpretation of Chapter**

- (1) Expressions (except “prescribed”) used in this Chapter and in Chapter 2 of Part 11 (manufactured payments) have the same meaning in this Chapter as in that Chapter.
- (2) References in this Chapter to a trade carried on through a branch or agency are to be read, in relation to a company, as references to a trade carried on through a permanent establishment.

## **927 Regulation-making powers: general**

Regulations under this Chapter may make different provision for different cases.

## **CHAPTER 10**

### **DEDUCTION FROM NON-COMMERCIAL PAYMENTS BY COMPANIES**

## **928 Chargeable payments connected with exempt distributions**

- (1) This section applies to any payment chargeable to tax under section 214(1) of ICTA (chargeable payments made within 5 years of an exempt distribution).
- (2) The person by or through whom the payment is made must, on making the payment, deduct from it a sum representing income tax on it at the basic rate in force for the tax year in which it is made.
- (3) See Chapter 11 (payments between companies etc) for an exception from the duty to deduct sums representing income tax under this section.

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- (4) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under this section—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.
- (5) In this section “payment” does not include a transfer of money's worth that is treated as a payment for the purposes of section 214 of ICTA.

## CHAPTER 11

### PAYMENTS BETWEEN COMPANIES ETC: EXCEPTION FROM DUTIES TO DEDUCT

#### *Introduction*

#### **929 Overview of Chapter**

- (1) This Chapter makes provision allowing some payments made by companies, local authorities and qualifying partnerships to be paid gross where they would otherwise be subject to specified duties to deduct sums representing income tax under this Part.
- (2) Section 930 disapplies specified duties to deduct where a payment is made by a company, local authority or qualifying partnership which reasonably believes that the payment is an excepted payment.
- (3) Section 931 confers power on an officer of Revenue and Customs to disapply section 930 by direction.
- (4) Section 932 defines “qualifying partnership”.
- (5) Sections 933 to 937 make provision as to when a payment is an excepted payment.
- (6) Section 938 deals with what happens when a company, local authority or qualifying partnership makes a payment without deducting a sum representing income tax under a reasonable but incorrect belief that the payment is an excepted payment.

#### *Exception from duties to deduct for excepted payments*

#### **930 Exception from duties to deduct sums representing income tax**

- (1) The duties to deduct sums representing income tax mentioned in subsection (2) do not apply to a payment if—
  - (a) it is made by a company, local authority or qualifying partnership, and
  - (b) at the time the payment is made, the company, authority or partnership reasonably believes that it is an excepted payment.
- (2) The duties to deduct are those under—
  - (a) section 874(2) (certain payments of yearly interest),
  - (b) section 889(4) (payments in respect of building society securities),
  - (c) section 901(4) (annual payments made by persons other than individuals),
  - (d) section 903(7) (patent royalties),

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- (e) section 906(5) (certain royalty payments etc where the owner lives abroad),
  - (f) section 910(2) (proceeds of a sale of patent rights paid to non-UK residents),
  - (g) section 919(2) (manufactured interest on UK securities: payments by UK residents etc), and
  - (h) section 928(2) (chargeable payments connected with exempt distributions).
- (3) Subsection (1) has effect subject to any directions under section 931.
- (4) Subsection (1) does not apply to a payment made by a company, or qualifying partnership, acting as trustee or agent for another person.

### **931 Power to make directions disapplying section 930**

- (1) An officer of Revenue and Customs may give a direction to a company, local authority or qualifying partnership directing that section 930 is not to apply in relation to any payment that—
- (a) is made by the company, authority or partnership after the giving of the direction, and
  - (b) is specified in the direction or is of a description so specified.
- (2) A direction under this section may be given only if the officer has reasonable grounds for believing, as respects each payment to which the direction relates, that the payment will not be an excepted payment at the time it is made.
- (3) A direction under this section may be varied or revoked by a later direction.
- (4) A variation or revocation of a direction under this section has effect only in relation to payments made after the date of the variation or revocation.

### **932 Meaning of “qualifying partnership”**

For the purposes of this Chapter a partnership is a “qualifying partnership” if any partner in the partnership is a company or a local authority.

#### *Excepted payments*

### **933 UK resident companies**

A payment is an excepted payment if the person beneficially entitled to the income in respect of which the payment is made is a UK resident company.

### **934 Non-UK resident companies**

- (1) A payment is an excepted payment if each of the following conditions is met in relation to the payment.
- (2) The person beneficially entitled to the income in respect of which the payment is made must be a non-UK resident company.
- (3) The non-UK resident company must carry on a trade in the United Kingdom through a permanent establishment.

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- (4) The payment must be one that is required to be brought into account in calculating the chargeable profits (within the meaning given by section 11(2) of ICTA) of the non-UK resident company.

### **935 PEP and ISA managers**

- (1) A payment is an excepted payment if each of the following conditions is met in relation to the payment.
- (2) The person to whom the payment is made must be, or must be the nominee of, the plan manager of a plan of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply.
- (3) The plan manager must receive the payment in respect of investments under the plan.

### **936 Recipients who are to be paid gross**

- (1) A payment is an excepted payment if it is made to, or to the nominee of, a recipient who is specified in subsection (2) as a recipient who is to be paid gross.
- (2) The following recipients are to be paid gross—
- (a) a local authority,
  - (b) a health service body within the meaning of section 519A(2) of ICTA,
  - (c) a public office or department of the Crown other than one mentioned in section 978(2),
  - (d) a charity,
  - (e) a body for the time being mentioned in section 507(1) of ICTA (bodies that are allowed the same exemption from tax as charitable companies the whole income of which is applied to charitable purposes),
  - (f) an Association which complies with the conditions in section 508(1) of ICTA (scientific research organisations),
  - (g) the scheme administrator of a registered pension scheme,
  - (h) the sub-scheme administrator of a sub-scheme which forms part of a split scheme pursuant to the Registered Pensions (Splitting of Schemes) Regulations 2006 (S.I. 2006/569),
  - (i) the trustees of a scheme entitled to exemption under section 613(4) of ICTA (Parliamentary pension funds), and
  - (j) the persons entitled to receive the income of a fund entitled to exemption under section 614(3) of ICTA (certain colonial, etc pension funds).
- (3) The Treasury may by order amend this section so as to add to, restrict or otherwise alter the persons or bodies who are to be paid gross.

### **937 Partnerships**

- (1) A payment is an excepted payment if each of the following conditions are met.
- (2) A partnership must be beneficially entitled to the income in respect of which the payment is made.
- (3) Each partner in the partnership must be—
- (a) a person or body mentioned in section 936, or



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- (b) a person or body to whom one of subsections (4) to (6) applies.
- (4) This subsection applies to a UK resident company.
- (5) This subsection applies to a company that—
  - (a) is non-UK resident,
  - (b) carries on a trade in the United Kingdom through a permanent establishment, and
  - (c) is required to bring into account, in calculating its chargeable profits (within the meaning of section 11(2) of ICTA), the whole of any share of the payment that is attributable to it because of sections 114 and 115 of ICTA.
- (6) This subsection applies to the European Investment Fund.
- (7) The Treasury may by order amend this section to add to, restrict or otherwise alter the persons or bodies falling within subsection (3)(b).

*Incorrect belief that payment is an excepted payment*

### **938 Consequences of reasonable but incorrect belief**

- (1) This section applies if—
  - (a) a payment is made by a company, local authority or qualifying partnership without a sum representing income tax on the payment being deducted from it,
  - (b) at the time the payment is made, the company, authority or partnership reasonably believes that it is an excepted payment,
  - (c) one of the duties to deduct sums representing income tax mentioned in section 930(2) would apply to the payment if the company did not so believe, and
  - (d) the payment is not an excepted payment at the time it is made.
- (2) This Part has effect in relation to the payment as if section 930(1) had never disapplied the duties to deduct mentioned in section 930(2).

## **CHAPTER 12**

### **FUNDING BONDS**

### **939 Duty to retain bonds where issue treated as payment of interest**

- (1) This section applies if—
  - (a) there is an issue of funding bonds to a creditor in respect of a liability to pay interest on a debt incurred by a government, public institution, other public authority or body corporate,
  - (b) by virtue of section 582(1)(a) of ICTA or section 380 of ITTOIA 2005, the issue is treated as if it were a payment of an amount of interest (“the deemed interest”), and
  - (c) the person by or through whom the bonds are issued is required, under this Part, to deduct a sum representing income tax from the deemed interest.

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- (2) The person by or through whom the bonds are issued must retain bonds the value of which is, at the time of their issue, equal to income tax on the deemed interest at the savings rate in force for the tax year in which the bonds are issued.
- (3) A person who retains bonds in accordance with subsection (2) is treated as complying with the duty to deduct a sum representing income tax from the deemed interest.
- (4) The person may tender the bonds retained in satisfaction of any income tax to be collected from the person in respect of the deemed interest under Chapter 15 or 16.
- (5) But see section 940 for provision about circumstances where it is impracticable to retain bonds in accordance with subsection (2).
- (6) In this Chapter “funding bonds” includes any bonds, stocks, shares, securities or certificates of indebtedness.

#### **940 Exception from duty to retain bonds**

- (1) This section applies if an issue of funding bonds is treated as a payment of interest (“the deemed interest”) as mentioned in section 939(1) and—
  - (a) the person by or through whom the bonds are issued is required to retain bonds under section 939(2), but
  - (b) it is impracticable for the person to do so.
- (2) The duty to deduct a sum representing income tax from the deemed interest under this Part does not apply if the person tells the Commissioners for Her Majesty's Revenue and Customs—
  - (a) the names and addresses of the persons to whom the bonds have been issued, and
  - (b) the amount of the bonds issued to each person.
- (3) Accordingly—
  - (a) the duty to retain bonds under section 939(2) does not apply, and
  - (b) the provisions in Chapters 15 and 16 about the collection of income tax in respect of the deemed interest do not apply.

## **CHAPTER 13**

### **UNAUTHORISED UNIT TRUSTS**

#### **941 Deemed payments to unit holders and deemed deductions of income tax**

- (1) Subsections (2) and (3) apply if a unit holder in an unauthorised unit trust is treated under Chapter 10 of Part 4 of ITTOIA 2005 (distributions from unauthorised unit trusts if the trustees are UK resident) as having received income on a date.
- (2) The trustees are treated as making on that date a payment to the unit holder representing the gross amount of the income (see section 548(2) of ITTOIA 2005).
- (3) The trustees are also treated as deducting from that payment a sum representing income tax on the gross amount of the income at the basic rate for the tax year in which the payment is made.

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- (4) Subsection (5) applies if the trustees of an unauthorised unit trust are treated under section 469(4A) of ICTA (distributions from unauthorised unit trusts if the trustees are UK resident) as making an annual payment to a unit holder.
- (5) The trustees are also treated as deducting from the annual payment a sum representing income tax on its gross amount (see section 469(4C) of ICTA) at the basic rate for the tax year in which the payment is made.
- (6) In this Chapter—
  - “deemed deduction” means a deduction within subsection (3) or (5),
  - “deemed payment” means a payment within subsection (2) or (4), and
  - “the gross amount” means, in relation to a deemed payment, the amount of the payment before the deemed deduction is made from it.

## **942 Income tax to be collected from trustees**

- (1) This section applies if in a tax year the trustees of an unauthorised unit trust are treated as making deemed payments.
- (2) Income tax is to be collected through trustees' self-assessment returns for the tax year (see Chapter 17).
- (3) The amount of income tax to be collected (“the collectable amount”) is the amount equal to the sum of the deemed deductions from the deemed payments.
- (4) But if the sum of the gross amounts of the deemed payments exceeds the trustees' modified net income for the tax year (see section 1025), the collectable amount is the amount calculated by taking the steps in subsection (5).
- (5) The steps to be taken are as follows.

### *Step 1*

Take the amount equal to the sum of the gross amounts of the deemed payments and reduce that amount by—

- (a) the amount of the trustees' income pool as at the start of the tax year (see section 943), or
- (b) if less, the amount by which the sum of the gross amounts of the deemed payments exceeds the trustees' modified net income.

### *Step 2*

Apply the basic rate for the tax year to the result from Step 1.

## **943 Calculation of trustees' income pool**

- (1) This is how the amount of the trustees' income pool as at the start of a tax year (“the current tax year”) is calculated.

The calculation to be used depends on which of the following cases applies.

But this needs to be read with subsections (2) and (3).

### *Case 1*

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This case applies if the trustees' modified net income for the previous tax year exceeded the sum of the gross amounts of the deemed payments treated as made by the trustees in that year.

The trustees' income pool as at the start of the current tax year is the sum of—

- (a) the amount of the trustees' income pool as at the start of the previous tax year, and
- (b) the amount by which the trustees' modified net income for the previous tax year exceeded the sum of the gross amounts of the deemed payments treated as made by the trustees in that year.

#### Case 2

This case applies if the trustees' modified net income for the previous tax year was less than the sum of the gross amounts of the deemed payments treated as made by the trustees in that year.

The trustees' income pool as at the start of the current tax year is—

- (a) the amount of the trustees' income pool as at the start of the previous tax year, less
- (b) the amount of the reduction made at Step 1 in section 942(5) for the purpose of calculating the collectable amount for the previous tax year.

#### Case 3

This case applies if the trustees' modified net income for the previous tax year equalled the sum of the gross amounts of the deemed payments treated as made by the trustees in that year.

The trustees' income pool as at the start of the current tax year is the same as the amount of the trustees' income pool as at the start of the previous tax year.

- (2) If the trustees were non-UK resident for the previous tax year, references in subsection (1) to the previous tax year are to be read as references to the last tax year prior to the current tax year for which the trustees were UK resident.
- (3) The income pool as at the start of the current tax year is nil if—
  - (a) the current tax year is the tax year during which the unauthorised unit trust is established, or
  - (b) the trustees have been UK resident for no tax year prior to the current tax year.

## CHAPTER 14

### TAX AVOIDANCE: DIRECTIONS FOR DUTY TO DEDUCT TO APPLY

#### 944 Directions for deduction from payments to non-UK residents

- (1) This section applies if it appears to an officer of Revenue and Customs that any person entitled to an amount taxable under—
  - (a) Chapter 3 of Part 13 (tax avoidance: transactions in land), or
  - (b) Chapter 4 of that Part (tax avoidance: sales of occupation income),
 is non-UK resident.

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- (2) The officer may, in relation to any payment forming the whole or part of that amount, direct that the person by or through whom the payment is made must, on making it, deduct from it a sum representing income tax on it at the basic rate in force for the tax year in which the payment is made.
- (3) Subsection (2) does not affect the final liability of the person entitled to the amount mentioned in subsection (1) including any liability under section 768(4) or 786(4) (recovery of tax where consideration receivable by person not assessed).
- (4) For provision about the collection of income tax in respect of a payment from which a sum must be deducted under subsection (2)—
  - (a) see Chapter 15 if the person making the payment is a UK resident company, and
  - (b) otherwise see Chapter 16.

## CHAPTER 15

### COLLECTION: DEPOSIT-TAKERS, BUILDING SOCIETIES AND CERTAIN COMPANIES

#### *Introduction*

#### **945 Overview of Chapter**

- (1) This Chapter provides—
  - (a) for persons who have made payments within section 946 (“section 946 payments”) to make returns of the payments, and
  - (b) for the collection of income tax in respect of those payments.
- (2) Sections 947 and 948 contain definitions and other provisions in relation to the following basic concepts used in the Chapter: “return period” and “accounting period”.
- (3) Section 949 requires persons who have made section 946 payments to deliver returns of those payments made in return periods falling within accounting periods, and section 950 requires such persons to deliver returns of those payments made otherwise than in accounting periods.
- (4) Section 951 explains—
  - (a) how much income tax is due from persons in respect of section 946 payments made by them, and
  - (b) when that income tax must be paid.
- (5) Sections 952 to 955 allow persons who have made section 946 payments to make claims for income tax they have suffered to be set off against income tax payable by them in respect of the payments.
- (6) Sections 956 to 960 explain what happens in cases where income tax payable in respect of section 946 payments is not paid when it is due, or where returns are incomplete or incorrect.
- (7) Sections 961 and 962 contain supplementary provisions.

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- (8) For further provisions applying to returns and set-off claims under this Chapter, see TMA 1970 (in particular section 113(1) (returns) and section 42 and Schedule 1A (claims)).

#### **946 Payments within this section**

The payments within this section are—

- (a) a payment from which a deposit-taker or building society is required to deduct a sum representing income tax under section 851,
- (b) a payment from which a UK resident company is required to deduct a sum representing income tax under—
  - (i) section 874(2) (payments of yearly interest),
  - (ii) section 889(4) (payments in respect of building society securities),
  - (iii) section 892(2) (certain payments of UK public revenue dividends),
  - (iv) section 901(4) (annual payments made by persons other than individuals),
  - (v) section 903(7) (patent royalties),
  - (vi) section 906(5) (royalty payments etc where the owner lives abroad),
  - (vii) section 910(2) (proceeds of a sale of patent rights paid to non-UK residents),
  - (viii) section 928(2) (chargeable payments connected with exempt distributions), or
  - (ix) section 944(2) (directions for deduction from payments to non-UK residents), and
- (c) a payment from which a company is required to deduct a sum representing income tax under section 919(2) (manufactured interest on UK securities: payments by UK residents etc).

#### **947 Return periods**

- (1) For the purposes of this Chapter, the return periods which fall within a person's accounting period are determined as follows.
- (2) If at least one quarter date falls within the accounting period, each of the following is a return period which falls within the accounting period—
  - (a) any complete quarter which falls within the accounting period, and
  - (b) any part of the accounting period which is not a complete quarter and which—
    - (i) ends with the first (or only) quarter date in that period, or
    - (ii) begins immediately after the last (or only) quarter date in that period.
- (3) If no quarter date falls within the accounting period, the accounting period itself is to be treated as a return period which falls within the accounting period.
- (4) In this section—
  - “quarter” means a period of three months ending—
    - (a) unless paragraph (b) applies, with the last day of March, June, September or December, or
    - (b) if the person mentioned in subsection (1) is a building society, with the last day of February, May, August or November, and

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“quarter date” means—

- (a) unless paragraph (b) applies, the last day of March, June, September or December, or
- (b) if the person mentioned in subsection (1) is a building society, the last day of February, May, August or November.

#### **948 Meaning of “accounting period”**

- (1) In this Chapter “accounting period”, in relation to a deposit-taker who is not a company, means a period for which the deposit-taker's accounts are drawn up. “Deposit-taker” has the same meaning as in Chapter 2 (see section 853).
- (2) See section 12 of ICTA (basis of, and periods for, assessment) for provision about accounting periods of companies.

#### *Returns of income tax*

#### **949 Payments in an accounting period**

- (1) This section applies if a person makes a section 946 payment on a date which falls within an accounting period of the person.
- (2) The person must deliver a return to an officer of Revenue and Customs for each return period—
  - (a) which falls within the accounting period, and
  - (b) in which the person makes a section 946 payment.
- (3) The person must deliver the return within 14 days after the end of the return period to which it relates.
- (4) The return must show the amount of—
  - (a) any section 946 payments made by the person in the return period, and
  - (b) the income tax payable by the person in respect of those payments (see section 951).

#### **950 Payments otherwise than in an accounting period**

- (1) This section applies if a person makes a section 946 payment on a date which does not fall within an accounting period of the person.
- (2) The person must deliver a return to an officer of Revenue and Customs within 14 days after the date on which the payment is made.
- (3) The return must show the amount of—
  - (a) the payment, and
  - (b) the income tax payable by the person in respect of that payment (see section 951).

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### *Collection and payment of income tax*

#### **951 Collection and payment of income tax**

- (1) Income tax in respect of a section 946 payment is due, from the person who makes the payment, on the date by which the return on which the payment must be included is required to be delivered.
- (2) The income tax due is equal to the sum which the person is required to deduct from the payment under the applicable provision mentioned in section 946.
- (3) The income tax is payable by the person without an officer of Revenue and Customs making any assessment.

### *Set-off*

#### **952 Conditions for a set-off claim**

- (1) A person who makes a section 946 payment may make a set-off claim if conditions A and B are met at the end of a return period which falls within an accounting period of the person.
- (2) Condition A is that in the return period the person has—
  - (a) made a section 946 payment, or
  - (b) received a payment on which the person has suffered income tax by deduction.
- (3) Condition B is that at the end of the return period there is—
  - (a) a net amount of income tax suffered (see subsection (4)), and
  - (b) a net amount of income tax payable (see subsection (5)).
- (4) There is a net amount of income tax suffered at the end of a return period if—
  - (a) the person has received any payments on which income tax has been suffered by deduction in the return period or in any previous return period which falls within the accounting period, and
  - (b) the amount of income tax so suffered by the person on those payments exceeds the amount of such income tax treated as repaid for the accounting period to date as a result of any previous set-off claim.
- (5) There is a net amount of income tax payable at the end of a return period if—
  - (a) the person has made any section 946 payments in the return period or in any previous return period which falls within the accounting period, and
  - (b) the amount of income tax payable by the person in respect of those payments exceeds the amount of such income tax treated as paid for the accounting period to date as a result of any previous set-off claim.

#### **953 How a set-off claim works**

- (1) A set-off claim is a claim for the net amount of income tax suffered at the end of the return period to be set off against the net amount of income tax payable at the end of the return period.
- (2) The effect of a claim is that, to the extent of the set-off—



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- (a) the income tax comprised in the net amount of income tax suffered is treated as repaid, and
  - (b) the income tax comprised in the net amount of income tax payable is treated as paid.
- (3) Accordingly—
  - (a) any liability of the person making the set-off claim to pay any of the income tax treated as paid under subsection (2)(b) is discharged, and
  - (b) any of that income tax which has been paid is to be repaid to the person.
- (4) A set-off claim must be made in a return under section 949 for the return period.
- (5) A return may be made under that section for the purposes of making a set-off claim despite the fact that the person making the claim may not have made any section 946 payments in the return period.
- (6) Income tax suffered which is taken into account in a set-off claim may not also be taken into account for the purposes of—
  - (a) section 7(2) of ICTA (income tax deducted from payments to UK resident company to be set off against corporation tax), or
  - (b) section 11(3) of that Act (income tax deducted from payments to non-UK resident company to be set off against corporation tax).
- (7) Income tax suffered by a deposit-taker is to be taken into account in a set-off claim only if the payment on which the income tax is suffered is to be taken into account in calculating the deposit-taker's liability to corporation tax.

“Deposit-taker” has the same meaning as in Chapter 2 (see section 853).

#### **954 Proceedings begun after a set-off claim is made**

- (1) If a set-off claim has been made no proceedings for collecting income tax which would have to be discharged if the claim were allowed may be brought until the claim is finally determined.
- (2) Subsection (1) does not affect the date when the income tax is due.
- (3) Any income tax underpaid as a result of this section must be paid when the claim is finally determined.
- (4) In this section “proceedings” includes proceedings by way of distraint or attachment.

#### **955 Proceedings begun before a set-off claim is made**

- (1) This section applies if—
  - (a) a person has made a set-off claim, and
  - (b) before the claim was made, proceedings were brought for collecting income tax assessed, or interest on income tax assessed, under section 956 or 957.
- (2) No effect is to be given to the set-off claim so as to affect or delay the collection or recovery of the income tax, or of interest on that income tax, until the claim is finally determined.
- (3) Any income tax overpaid as a result of this section must be repaid when the claim is finally determined.

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- (4) In this section “proceedings” includes proceedings by way of distraint or attachment.

### *Assessments and errors*

#### **956 Assessments where section 946 payment included in return**

- (1) This section applies if any income tax in respect of a section 946 payment which is included in a return under this Chapter has not been paid at or before the date mentioned in section 951.
- (2) An officer of Revenue and Customs may make an assessment on the person who made the payment.
- (3) Income tax may be assessed under this section whether or not it has been paid when the assessment is made.

#### **957 Assessments in other cases**

- (1) This section applies if an officer of Revenue and Customs thinks—
  - (a) that there is a section 946 payment which should have been included in a return under this Chapter and which has not been so included, or
  - (b) that a return under this Chapter is otherwise incorrect.
- (2) An officer of Revenue and Customs may make an assessment, to the best of the officer's judgement, on the person who made the return, or who should have made one.

#### **958 Payer's duty to deliver amended return**

- (1) This section applies if a person who has made a section 946 payment becomes aware that—
  - (a) anything which should have been included in a return delivered by the person under this Chapter has not been so included,
  - (b) anything which should not have been included in a return delivered by the person under this Chapter has been so included, or
  - (c) any other error has occurred in a return delivered by the person under this Chapter.
- (2) The person must deliver an amended return correcting the error to an officer of Revenue and Customs without delay.
- (3) If the person delivers an amended return such assessments, adjustments, set-offs or payments or repayments of income tax as are necessary for achieving the objective mentioned in subsection (4) must be made.
- (4) The objective is that the resulting liabilities to income tax (including interest on unpaid or overpaid income tax) of the person or any other person are the same as they would have been if a correct return had been delivered.

#### **959 Application of Income Tax Acts provisions about time limits for assessments**

- (1) This section deals with the application of the provisions of the Income Tax Acts about time limits for making assessments.

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- (2) So far as the provisions refer or relate to—
  - (a) the tax year for which an assessment is made, or
  - (b) the year to which an assessment relates,they apply to assessments under this Chapter despite the fact that an assessment under this Chapter may relate to a return period which is not a tax year.
- (3) Subsection (4) applies if an assessment under this Chapter relates to income tax due in respect of a payment required to be included in a return for a return period under section 949 (payments in an accounting period).
- (4) In that case, for the purposes of the provisions mentioned in subsection (1), the assessment is treated as made for the tax year in which the return period ends.
- (5) Subsection (6) applies if an assessment under this Chapter relates to income tax due in respect of a payment required to be included in a return under section 950 (payments otherwise than in an accounting period).
- (6) In that case, for the purposes of the provisions mentioned in subsection (1), the assessment is treated as made for the tax year in which payment is made.

## **960 Further provisions about assessments**

- (1) Income tax assessed on a person under this Chapter is due on the date mentioned in section 951 and an appeal against the assessment does not affect the date when the income tax is due under that section.
- (2) On the determination of an appeal against an assessment under this Chapter any income tax overpaid must be repaid.
- (3) Any income tax assessable under any one or more of the provisions of this Chapter may be included in a single assessment if all the income tax is due on the same date.

### *Supplementary*

## **961 Relationship between Chapter and Income Tax Acts powers**

Nothing in this Chapter affects any powers conferred by the Income Tax Acts for the recovery of income tax by means of an assessment or otherwise.

## **962 Power to make regulations modifying Chapter**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations modify, replace or supplement any of the provisions of this Chapter for the purpose of regulating the time and manner in which persons making section 946 payments—
  - (a) are to account for and pay income tax which is to be collected from them in respect of those payments, and
  - (b) are to be repaid income tax in respect of payments received by them.
- (2) In particular, regulations under this section may, in relation to income tax for which a person is liable to account,—
  - (a) modify any provision of Parts 2 to 6 of TMA 1970, or
  - (b) apply any such provision with or without modifications.

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- (3) Regulations under this section may—
  - (a) make different provision for different kinds of payer,
  - (b) make different provision for different circumstances, and
  - (c) authorise the Commissioners for Her Majesty's Revenue and Customs, if they think there are special circumstances justifying it, to make special arrangements in relation to—
    - (i) income tax for which a person is liable to account, or
    - (ii) the repayment of income tax suffered by a person.
- (4) Regulations under this section may contain incidental, supplemental, consequential and transitional provision and savings.
- (5) The Commissioners for Her Majesty's Revenue and Customs must not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.
- (6) References in this Act and in any other enactment to any of the provisions of this Chapter are to be read as references to those provisions as modified, replaced or supplemented by provision made by regulations under this section.

## CHAPTER 16

### COLLECTION: CERTAIN PAYMENTS BY OTHER PERSONS

#### **963     Collection of income tax on certain payments by other persons**

- (1) This section makes provision for the collection of income tax in respect of—
  - (a) a payment from which a person other than a UK resident company is required to deduct a sum representing income tax under—
    - (i) section 874(2) (certain payments of yearly interest),
    - (ii) section 889(4) (payments in respect of building society securities),
    - (iii) section 892(2) (certain payments of UK public revenue dividends),
    - (iv) section 901(4) (annual payments made by persons other than individuals),
    - (v) section 903(7) (patent royalties),
    - (vi) section 906(5) (royalty payments etc where the owner lives abroad),
    - (vii) section 910(2) (proceeds of a sale of patent rights paid to non-UK residents),
    - (viii) section 928(2) (chargeable payments connected with exempt distributions), or
    - (ix) section 944(2) (directions for deduction from payments to non-UK residents), and
  - (b) a payment from which a person other than a company is required to deduct a sum representing income tax under section 919(2) (manufactured interest for UK securities: payments by UK residents etc).
- (2) The person required to deduct the sum must deliver to an officer of Revenue and Customs an account of the payment without delay.

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- (3) An officer of Revenue and Customs may make an assessment on that person for income tax equal to the sum required to be deducted.
- (4) The provisions of the Income Tax Acts relating to—
  - (a) persons chargeable to income tax,
  - (b) income tax assessments, and
  - (c) the collection and recovery of income tax,apply (unless excluded expressly or by implication) to the assessment, collection and recovery of income tax which is assessable on persons under this section.

## CHAPTER 17

### COLLECTION THROUGH SELF-ASSESSMENT RETURN

#### 964 Collection through self-assessment return

- (1) This section applies if—
  - (a) a person makes a payment from which the person is required to deduct a sum representing income tax, and
  - (b) income tax equal to the sum required to be deducted is, under section 900(3), 901(3) or 903(5) or (6), to be collected through the person's self-assessment return.
- (2) This section also applies if, in accordance with section 942, income tax is to be collected through a trustee's self-assessment return.
- (3) The income tax is to be treated for the purposes of TMA 1970 as if it were income tax charged on the person or trustee.
- (4) Accordingly, the income tax must be taken into account for the purposes of—
  - (a) the person's or trustee's return under section 8 or 8A of TMA 1970, and
  - (b) the person's or trustee's assessment to income tax under section 9 of that Act, (in addition to the person or trustee's income tax liability calculated in accordance with Chapter 3 of Part 2 (calculation of income tax liability)).
- (5) But the relevant amount under section 59A of TMA 1970 (payments on account of income tax) is to be calculated as if the income tax were not taken into account for the purposes of the assessment to income tax under section 9 of TMA 1970.

## CHAPTER 18

### OTHER REGIMES INVOLVING THE DEDUCTION OF INCOME TAX AT SOURCE

#### *Visiting performers*

#### 965 Overview of sections 966 to 970

- (1) Sections 966 to 970 make provision for the payment of sums representing income tax to the Commissioners for Her Majesty's Revenue and Customs where certain payments

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or transfers are made in connection with activities performed in the United Kingdom by non-UK resident entertainers, sportsmen and sportswomen.

(2) See also—

section 556 of ICTA (entertainers and sportsmen) which makes provision in relation to such payments or transfers for the purposes of corporation tax, Chapter 8 of Part 2 of ITEPA 2003 (application of provisions to workers under arrangements made by intermediaries), in particular section 48(2) (exclusions from the scope of the Chapter), and sections 13 and 14 of ITTOIA 2005 (trades and trade profits: visiting performers).

## **966 Duty to deduct and account for sums representing income tax**

(1) This section applies if—

- (a) an entertainer, sportsman or sportswoman of a prescribed description (“a performer”) who is non-UK resident for a tax year performs a relevant activity in the United Kingdom in the tax year, and
- (b) a payment or transfer connected with the relevant activity is made.

(2) It does not matter—

- (a) whether the payment or transfer is made to the performer or anyone else, or
- (b) when the payment or transfer is made.

(3) If a payment within subsection (1)(b) is made the person who makes the payment must, on making it, deduct from it a sum representing income tax and account to the Commissioners for Her Majesty's Revenue and Customs for the sum.

(4) If a transfer within subsection (1)(b) is made the person who makes the transfer must account to the Commissioners for Her Majesty's Revenue and Customs for a sum representing income tax.

(5) See section 967 as to the calculation of the sums representing income tax mentioned in subsections (3) and (4).

(6) This section does not apply to payments or transfers of such a kind as may be prescribed.

(7) In this section—

- (a) “relevant activity” means an activity of a prescribed description, and
- (b) a payment or transfer is connected with a relevant activity if it has a connection of a prescribed kind with that activity.

## **967 Calculation of sums representing income tax**

(1) The sums representing income tax mentioned in section 966(3) and (4) are to be calculated in accordance with prescribed rules.

(2) But the sums must not exceed the relevant proportion of the payment concerned or of the value of what is transferred.

“Relevant proportion” means a proportion equal to the basic rate of income tax for the tax year in which the payment or transfer is made.

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- (3) Regulations made by the Treasury may provide, in relation to a transfer to which section 966 applies, that for the purposes of the Tax Acts the value of what is transferred is to be calculated in accordance with prescribed rules.
- (4) In particular, rules may include provision—
  - (a) for the calculation of an amount representing the actual value of what is transferred,
  - (b) for that amount to be treated as a net amount corresponding to a gross amount from which income tax at the basic rate has been deducted, and
  - (c) for the gross amount to be taken to be the value of what is transferred.

## **968 Treatment of sums representing income tax**

- (1) This section applies if, in accordance with section 966(3) or (4), a person pays a sum to the Commissioners for Her Majesty's Revenue and Customs.
- (2) The sum is treated as paid on account of a liability of another person to income tax or corporation tax.
- (3) The liability and the other person are to be found in accordance with prescribed rules.
- (4) If the sum exceeds the liability concerned, the Commissioners must pay so much of the sum as is appropriate to the other person.
- (5) If no liability is found, the Commissioners must pay the sum to the recipient of the relevant payment or transfer.
- (6) The relevant payment or transfer is the payment or transfer—
  - (a) to which section 966 applies, and
  - (b) which gave rise to the payment of the sum.
- (7) A reference to a sum in this section does not include anything representing interest.

## **969 Regulations**

- (1) The Treasury may by regulations—
  - (a) make provision enabling the Commissioners for Her Majesty's Revenue and Customs to serve notices requiring persons who make payments or transfers to which section 966 applies to give them prescribed information in respect of such payments or transfers,
  - (b) make provision requiring persons who make payments or transfers to which section 966 applies to make, at prescribed times and for prescribed periods, returns to the Commissioners containing prescribed information about payments or transfers and the income tax for which those persons are accountable in respect of them,
  - (c) make provision for the collection and recovery of such income tax, for assessments and claims to be made in respect of it, and for the payment of interest on it, and
  - (d) adapt, or modify the effect of, any enactment relating to income tax for the purpose of making any provision mentioned in paragraphs (a) to (c).

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- (2) The Treasury may also by regulations make provision generally for giving effect to this section and sections 966 to 968 (including different provision for different cases or descriptions of case).

## **970 Supplementary**

- (1) For the purposes of the Tax Acts a payment to which section 966 applies is treated as if it were not reduced by the deduction of a sum representing income tax under that section.
- (2) An officer of Revenue and Customs may disclose, to any person who appears to the officer to have an interest in the matter, information relevant to determining whether section 966 applies to a payment or transfer.
- (3) An officer is not precluded from doing so by any obligation as to secrecy imposed by statute or otherwise.
- (4) In this section and sections 966 to 969—
- (a) references to a payment include references to a payment by way of loan of money, and
  - (b) references to a transfer do not include references to a transfer of money but, subject to that, include references to—
    - (i) a temporary transfer (as by way of loan), and
    - (ii) a transfer of a right (whether or not a right to receive money).
- (5) In sections 966 to 969 “prescribed” means prescribed by regulations made by the Treasury.

### *Non-resident landlords*

## **971 Income tax due in respect of income of non-resident landlords**

- (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations make provision for—
- (a) the collection, from non-resident landlord representatives of a prescribed description, of prescribed amounts of income tax in respect of non-resident landlord income, and
  - (b) the assessment and recovery of the income tax on or from such persons.
- (2) “Non-resident landlord income” means income of a person whose usual place of abode is outside the United Kingdom (“the non-resident”) and which is or may become chargeable—
- (a) under Schedule A, or
  - (b) as the profits of a UK property business under Chapter 3 of Part 3 of ITTOIA 2005.
- (3) “Non-resident landlord representative” means—
- (a) a person by whom any sums are payable to the non-resident which are to be treated as receipts of a Schedule A business, or a UK property business, carried on by the non-resident, or
  - (b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.



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- (4) A non-resident landlord representative who must pay prescribed amounts of income tax to the Commissioners for Her Majesty's Revenue and Customs under regulations under this section is entitled—
- (a) to be indemnified by the non-resident for all such payments, and
  - (b) to retain out of any sums otherwise due from the representative to the non-resident, or received by the representative on behalf of the non-resident, sums representing income tax sufficient for meeting any liabilities under the regulations to make such payments.
- (5) Subsection (4)(b) applies whether the liability is one which the representative has discharged or to which the representative is subject.

## **972 Regulations under section 971**

- (1) Regulations under section 971 may, in particular, include all or any of the following provisions—
- (a) provision for the amount of any income tax in respect of non-resident landlord income, which is to be paid to the Commissioners for Her Majesty's Revenue and Customs, to be calculated by reference to prescribed factors,
  - (b) provision for the determination in accordance with the regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Commissioners,
  - (c) provision for requiring the payment of interest on amounts which are not paid to the Commissioners at the times required under the regulations,
  - (d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a non-resident landlord representative, and as to the particulars to be included in any such certificate,
  - (e) provision for the making of repayments of income tax to the non-resident and for such repayments to be made in prescribed cases to non-resident landlord representatives,
  - (f) provision for the payment of interest by the Commissioners on sums repaid under the regulations,
  - (g) provision for the rights and obligations arising under the regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed,
  - (h) provision for the making and determination of applications for requirements of the regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications,
  - (i) provision for appeals with respect to questions arising under the regulations,
  - (j) provision requiring non-resident landlord representatives within section 971(3)(b) who are of a prescribed description to register with the Commissioners,
  - (k) provision requiring persons registered with the Commissioners and other non-resident landlord representatives of a prescribed description to make returns and supply prescribed information to the Commissioners and to make available prescribed books, documents and other records for inspection on behalf of the Commissioners,
  - (l) provision for the partnership, as such, to be treated as the non-resident landlord representative if a liability to make a payment under the regulations arises

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- from amounts payable or things done in the course of a business carried on by persons in partnership, and
- (m) provision which, in relation to payments of income tax to be made by virtue of section 971 or to sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from section 971 with respect to cases in which tax is or is treated as deducted from any income.
- (2) Interest required to be paid by regulations under section 971 is to be paid without deduction of a sum representing income tax and is not to be taken into account in calculating any income, profits or losses for any tax purposes.
- (3) Regulations under section 971 may—
- (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (4) Provision made by virtue of subsection (3)(b) may, in particular, in connection with any other provision made by regulations under section 971, modify the operation in any case of section 59A of TMA 1970 (payments on account of income tax).
- (5) In this section and section 971 “prescribed” means prescribed by, or determined by an officer of Revenue and Customs in accordance with, regulations made by the Commissioners for Her Majesty's Revenue and Customs under section 971.
- (6) See section 121(2)(c) of FA 2006 which prevents certain distributions of Real Estate Investment Trusts being non-resident landlord income for the purposes of regulations under section 971.

### *Real Estate Investment Trusts*

## **973 Income tax due in respect of distributions**

- (1) The Treasury may make regulations providing for the assessment, collection and recovery of income tax where—
- (a) a distribution to which subsection (2) or (3) applies is made, and
  - (b) tax is or may become chargeable in respect of the distribution (whether by virtue of section 121(1) of FA 2006 (distributions: liability to tax) or otherwise).
- (2) This subsection applies to a distribution if—
- (a) it is made by a company to which Part 4 of FA 2006 applies (Real Estate Investment Trusts), and
  - (b) it is a distribution of profits or gains (or of both) of C (tax-exempt).
- (3) This subsection applies to a distribution if—
- (a) it is made by the principal company of a group to which Part 4 of FA 2006 applies, and
  - (b) it is a distribution of amounts shown in the financial statements of G (property rental business) as—
    - (i) profits and gains of UK resident members of the group, or
    - (ii) profits and gains of the property rental business in the United Kingdom of non-UK resident members of the group.

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(4) In this section—

“C (tax-exempt)” has the meaning given by section 105(3)(b) of FA 2006,

“G (property rental business)” has the meaning given by paragraph 2 of Schedule 17 to that Act,

“group” and “principal company” have the meanings given by section 134 of that Act, and

“property rental business” has the meaning given by section 104 of that Act (read with paragraph 32(2) of Schedule 17 to that Act).

(5) References in this section to a UK resident company have the same meaning as in Schedule 17 to FA 2006 (see paragraph 3(1) of that Schedule).

(6) In this section “gains” includes chargeable gains.

## **974 Regulations under section 973**

(1) Regulations under section 973 may, in particular—

- (a) require a company to deduct sums representing income tax at the basic rate before payment of distributions,
- (b) specify classes of shareholder to whom distributions may be made without deduction of such sums,
- (c) make provision about the calculation of the sums to be deducted by a company,
- (d) require a company to account for income tax equal to the sums deducted,
- (e) apply an enactment (with or without modification) in respect of cases where a sum representing income tax is deducted or treated as deducted from income,
- (f) specify the time at which a distribution is to be treated as made by a company,
- (g) specify periods in respect of which payments of income tax are to be made,
- (h) specify times at which payments of income tax are to be made,
- (i) make provision about the making of claims and determinations in respect of over-payment or under-payment (which may include provision for appeals),
- (j) include provision requiring the payment of interest in respect of late payments of income tax (which may—
  - (i) provide for payment without deduction of sums representing income tax,
  - (ii) allow interest paid as a deduction from profits of the company's tax-exempt business),
- (k) require a company to provide a shareholder with a statement in writing containing specified information,
- (l) make provision about the repayment to a shareholder of sums deducted and paid to the Commissioners for Her Majesty's Revenue and Customs in respect of income tax,
- (m) make provision for the payment of interest in respect of repayments under paragraph (l),
- (n) require notices to be given by or to a company,
- (o) require a company to make returns, and
- (p) require a company to make records available to the Commissioners for Her Majesty's Revenue and Customs for inspection.

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- (2) A reference in subsection (1) to a distribution in respect of profits of tax-exempt business includes a distribution made after Part 4 of FA 2006 has ceased to apply to a company.
- (3) A distribution which is treated as having been made by virtue of section 107(9)(b) of FA 2006 is also to be treated as having been made for the purposes of regulations under section 973.
- (4) Regulations under section 973—
  - (a) may make provision which applies generally or only in specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances, and
  - (c) may contain incidental, supplemental, consequential and transitional provision and savings.
- (5) In subsections (1) and (2), so far as they apply to cases within section 973(1)(a), “profits” includes gains (including chargeable gains).
- (6) In this section “tax-exempt business” has same meaning as in Part 4 of FA 2006 (see section 107(2) of that Act).

## CHAPTER 19

### GENERAL

#### *Supplementary*

#### **975 Statements about deduction of income tax**

- (1) Subsection (2) applies if a person makes a payment from which a sum representing income tax must be deducted under any provision of Chapters 2 to 7 or under section 919 or 928.
- (2) If the recipient requests it in writing, the person must provide the recipient with a statement showing—
  - (a) the gross amount of the payment,
  - (b) the amount of the sum deducted, and
  - (c) the actual amount paid.
- (3) Subsection (4) applies if the trustees of an unauthorised unit trust are treated as making a deemed payment to a unit holder (“U”).
- (4) If U requests it in writing, the trustees must provide U with a statement showing—
  - (a) the gross amount of the payment,
  - (b) the amount of the deemed deduction from the payment, and
  - (c) the amount of the payment after the deemed deduction.
- (5) A statement under this section must be in writing.
- (6) The duty to comply with a request under subsection (2) or (4) is enforceable by the recipient or U (as the case may be).

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- (7) In this section “deemed deduction”, “deemed payment” and “the gross amount” have the same meanings as in Chapter 13 (see section 941(6)).

## **976 Arrangements for payments of interest less tax or at specified net rate**

- (1) This section applies if—
- (a) provision is made for the payment of interest, and
  - (b) the interest is payable without deduction of a sum representing income tax.
- (2) It applies—
- (a) whenever the provision was made, and
  - (b) whether it was made orally or in writing.
- (3) If the provision is for the payment of interest “less tax” (or uses words to similar effect) it is to be read as if the words “less tax” (or the equivalent words) were not included.
- (4) Subsection (5) applies if the provision is (however worded)—
- (a) for the payment of interest to which subsection (6) applies, and
  - (b) for that interest to be paid at such a rate (“the gross rate”) that the amount of interest payable at that rate is, after deduction of a sum representing income tax, equal to the amount of interest payable at a specified rate (“the net rate”).
- (5) In that case the provision is to be read as if it were for the payment of interest at the gross rate.
- (6) This subsection applies to—
- (a) interest on which the recipient is chargeable to income tax, which falls within Chapter 2 of Part 4 of ITTOIA 2005 but which is not relevant foreign income, or
  - (b) interest on which the recipient is chargeable to corporation tax under Case III of Schedule D.

## **977 Payments to companies**

- (1) The provisions of this Part relating to the deduction from payments of sums representing income tax are not affected by the fact that the recipient is a company not chargeable to income tax on the payment.
- (2) References in subsection (1) to payments received by a company—
- (a) include payments received by another person on behalf of or in trust for the company, but
  - (b) do not include payments received by the company on behalf of or in trust for another person.
- (3) For further provision about payments received by companies, see—
- (a) sections 7(2) and 11(3) of ICTA (set-off of income tax deducted at source against liability to corporation tax), and
  - (b) section 952 (set-off of income tax suffered against income tax payable under Chapter 15).

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## **978 Application to public departments**

- (1) This Part applies in relation to payments made by public offices and departments of the Crown except as mentioned in subsection (2).
- (2) This Part does not apply to payments made by public offices and departments of—
  - (a) any country mentioned in Schedule 3 to the British Nationality Act 1981 (c. 61) (which contains a list of Commonwealth countries) or the Republic of Ireland, or
  - (b) any state or province of a country within paragraph (a).

## **979 Designated international organisations: exceptions from duties to deduct**

- (1) The Treasury may by order designate for the purposes of this section any international organisation of which the United Kingdom is a member.
- (2) The duty to deduct under section 874 (duty to deduct from certain payments of yearly interest) does not apply to a payment of interest made by—
  - (a) an organisation designated under subsection (1), or
  - (b) a partnership of which an organisation so designated is a member.
- (3) None of the duties to deduct under Chapters 6, 7 (deduction from annual payments, patent royalties and other payments connected with intellectual property) and 14 (directions for duty to deduct to apply in tax avoidance cases) apply to a payment made by an organisation designated under subsection (1).
- (4) The duties to deduct under sections 919(2) and 922(2) do not apply in a case where the payer of the manufactured interest or (as the case may be) the manufactured overseas dividend is an organisation designated under subsection (1).

## **980 Derivative contracts: exception from duties to deduct**

- (1) Despite the provisions of this Part, a company is not required to deduct a sum representing income tax from a payment made under a derivative contract to which this section applies.
- (2) This section applies to a derivative contract if profits and losses arising from it are calculated in accordance with Schedule 26 to FA 2002.

## **981 Foreign currency securities etc: exception from duties to deduct**

Despite the provisions of this Part there is no duty to deduct a sum representing income tax from a payment of interest within section 755(1) of ITTOIA 2005 (interest on foreign currency securities etc owned by non-UK residents).

## **982 Income tax is calculated by reference to gross amounts**

If any provision of this Part requires the deduction from a payment of a sum representing income tax at a specified rate, the rate is to be applied to the gross payment, that is to the payment before deduction of a sum representing income tax under this Part.

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## *Interpretation*

### **983 Meaning of “deposit”**

In this Chapter “deposit” means a sum of money paid on terms which mean that it will be repaid (with or without interest)—

- (a) on demand, or
- (b) at a time or in circumstances agreed by or on behalf of the person who pays it and the person who receives it.

### **984 Meaning of “financial instrument”**

(1) In this Part “financial instrument” includes—

- (a) any money,
- (b) any shares or securities,
- (c) an option, future or contract for differences if its underlying subject-matter is (or is primarily) one or more financial instruments, and
- (d) an instrument the underlying subject-matter of which is (or is primarily) creditworthiness.

(2) For the purposes of subsection (1) if the effect of an instrument depends on an index or factor, the “underlying” subject-matter of the instrument is the matter by reference to which the index or factor is determined.

### **985 Meaning of “qualifying certificate of deposit”**

(1) In this Part “qualifying certificate of deposit” means a certificate of deposit under which—

- (a) the amount payable is at least £50,000, exclusive of interest, and
- (b) that amount is payable at a specified time within 5 years beginning with the date on which the deposit is made.

(2) If an amount is denominated in a foreign currency, subsection (1)(a) has effect as if it referred to an amount which is at least the equivalent in that currency of £50,000 at the time the deposit is made.

(3) For the meaning of “certificate of deposit”, see section 1019.

### **986 Meaning of “qualifying uncertificated eligible debt security unit”**

(1) In this Part “qualifying uncertificated eligible debt security unit” means an uncertificated eligible debt security unit under which—

- (a) the amount payable is at least £50,000, exclusive of interest, and
- (b) that amount is payable at a specified time within 5 years beginning with the date on which the deposit is made.

(2) If an amount is denominated in a foreign currency, subsection (1)(a) has effect as if it referred to an amount which is at least the equivalent in that currency of £50,000 at the time the deposit is made.

(3) In this section “uncertificated eligible debt security unit” means an uncertificated unit of an eligible debt security where the issue of the unit corresponds, in accordance with

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the current terms of issue of the eligible debt security, to the issue of a certificate of deposit.

(4) In subsection (3)—

- (a) “eligible debt security”,
- (b) “uncertificated” (in relation to a unit), and
- (c) “unit”,

have the meanings given by regulation 3(1) of the Uncertificated Securities Regulations 2001 (S.I. 2001/3755).

(5) For the meaning of “certificate of deposit”, see section 1019.

### **987 Meaning of “quoted Eurobond”**

In this Part “quoted Eurobond” means a security, including a share (in particular any permanent interest bearing share as defined in section 117 of TCGA 1992), that—

- (a) is issued by a company,
- (b) is listed on a recognised stock exchange, and
- (c) carries a right to interest.

## **PART 16**

### **INCOME TAX ACTS DEFINITIONS ETC**

## **CHAPTER 1**

### **DEFINITIONS**

### **988 Overview of Chapter**

- (1) This Chapter contains definitions which apply for the purposes of the Income Tax Acts, except where, in those Acts, the context otherwise requires.
- (2) To find a definition go first to section 989, which sets out some of the definitions in full.
- (3) If a definition is not set out in full in section 989, the section indicates where it is set out in full.
- (4) In some cases it is stated that a definition does not apply for the purposes of specified provisions of the Income Tax Acts (see, for example, sections 990(2), 992(3) and 1007(4)).
- (5) And in some cases it is stated that a definition has effect only for the purposes of specific provisions of the Income Tax Acts (see, for example, sections 991, 993, 995 and 1006).

### **989 The definitions**

The following definitions apply for the purposes of the Income Tax Acts—

“Act” has the meaning given by section 990,



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“authorised unit trust” is to be read in accordance with section 468(6) to (9) of ICTA,

“bank” is to be read in accordance with section 991,

“basic rate” means the rate of income tax determined in pursuance of section 6(2),

“basic rate limit” has the meaning given by section 20(2),

“body of persons” means any body politic, corporate or collegiate and any company, fraternity, fellowship or society of persons whether corporate or not corporate,

“building society” means a building society within the meaning of the Building Societies Act 1986 (c. 53),

“capital allowance” means any allowance under CAA 2001,

“the Capital Allowances Act” means CAA 2001,

“chargeable gain” has the same meaning as in TCGA 1992,

“chargeable period” means an accounting period of a company or a tax year,

“charity” means a body of persons or trust established for charitable purposes only,

“close company” has the same meaning as in the Corporation Tax Acts (see sections 414 and 415 of ICTA),

“company” has the meaning given by section 992,

“connected”, in relation to two persons being connected with one another, is to be read in accordance with sections 993 and 994,

“control”, in relation to the control of a body corporate or a partnership, is to be read in accordance with section 995,

“distribution” has the same meaning as in the Corporation Tax Acts (see Part 6, and section 418, of ICTA),

“dividend income” has the meaning given by section 19,

“dividend ordinary rate” means the rate of income tax specified in section 8(1),

“dividend trust rate” means the rate of income tax specified in section 9(2),

“dividend upper rate” means the rate of income tax specified in section 8(2),

“farming” has the meaning given by section 996,

“for accounting purposes” has the meaning given by section 997(4),

“forestry” is to be read in accordance with section 996,

“generally accepted accounting practice” has the meaning given by section 997(1) and (3),

“grossing up” is to be read in accordance with section 998,

“higher rate” means the rate of income tax determined in pursuance of section 6(2),

“international accounting standards” has the meaning given by section 997(5),

“local authority” has the meaning given by section 999,

“local authority association” has the meaning given by section 1000,

“market gardening” has the meaning given by section 996,

“net income” has the meaning given by section 23 (see Step 2 in that section),

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“non-UK resident” means not resident in the United Kingdom (and references to a non-UK resident or a non-UK resident person are to a person who is not resident there),

“normal self-assessment filing date”, in relation to a tax year, means the 31 January following the tax year,

“notice” means notice in writing or in a form authorised (in relation to the case in question) by directions under section 118 of FA 1998,

“offshore installation” has the meaning given by sections 1001 and 1002,

“oil and gas exploration and appraisal” has the meaning given by section 1003,

“ordinary share capital”, in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits,

“overseas property business” has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005,

“period of account”—

- (a) in relation to a person, means any period for which the person draws up accounts, and
- (b) in relation to a trade, profession, vocation or other business, means any period for which the accounts of the business are drawn up,

“permanent establishment”, in relation to a company, has the meaning given by section 148 of FA 2003,

“personal representatives” in relation to a person who has died, means—

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
- (b) in a territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased,

“profits or gains” does not include chargeable gains,

“property investment LLP” has the meaning given by section 1004,

“qualifying distribution” has the meaning given by section 14(2) of ICTA,

“qualifying policy” means a policy of insurance which is a qualifying policy for the purposes of Chapter 1 of Part 7 of ICTA,

“recognised stock exchange” has the meaning given by section 1005,

“registered pension scheme” has the meaning given by section 150(2) of FA 2004,

“relevant foreign income” has the meaning given by section 830(1) to (3) of ITTOIA 2005 but also includes, for any purpose mentioned in any provision listed in section 830(4) of that Act, income treated as relevant foreign income for that purpose by that provision,

“research and development” is to be read in accordance with section 1006,

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the [<sup>F126</sup>Statistics Board], or
- (b) if that index is not published for a relevant month, any substituted index or index figures published by [<sup>F127</sup>the Board],

“savings income” has the meaning given by section 18,

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“savings rate” means the rate of income tax specified in section 7,

“Schedule A business” means any business the profits of which are chargeable to corporation tax under Schedule A, including the business in the course of which any transaction is (as a result of paragraph 1(2) of that Schedule) to be treated as entered into,

“scheme administrator”, in relation to a pension scheme, has the meaning given by section 270 of FA 2004 (but see also sections 271 to 274 of that Act),

“settled property” (together with references to property comprised in a settlement) is to be read in accordance with section 466,

“settlor” is to be read in accordance with sections 467 to 473,

[<sup>F128</sup>“shares, stock or other securities included in the official UK list” is to be read in accordance with sections 467 to 473,” is to be read in accordance with section 1005,

“shares, stock or other securities listed on a recognised stock exchange” is to be read in accordance with section 1005, ]

“starting rate” means the rate of income tax determined in pursuance of section 6(2),

“starting rate limit” has the meaning given by section 20(1),

“stepchild”, in relation to a civil partner, is to be read in accordance with section 246 of the Civil Partnership Act 2004 (c. 33),

“51% subsidiary”, in relation to bodies corporate, has the same meaning as in the Corporation Tax Acts (see section 838 of ICTA),

“75% subsidiary”, in relation to bodies corporate, has the same meaning as in the Corporation Tax Acts (see section 838 of ICTA),

“tax” is to be read in accordance with section 832(3) of ICTA,

“tax credit” means a tax credit under section 397(1) of ITTOIA 2005,

“tax year” has the meaning given by section 4(2),

“the tax year 2007-08” (and any corresponding expression in which two years are similarly mentioned) has the meaning given by section 4(4),

“total income” has the meaning given by section 23 (see Step 1 in that section and also section 31),

“trade” includes any venture in the nature of trade,

“trust rate” means the rate of income tax specified in section 9(1),

“UK generally accepted accounting practice” has the meaning given by section 997(2),

“UK property business” has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005,

“UK resident” means resident in the United Kingdom (and references to a UK resident or a UK resident person are to a person who is resident there),

“umbrella scheme” is to be read in accordance with section 468(6) to (9) of ICTA,

“unauthorised unit trust” means a unit trust scheme which is neither an authorised unit trust nor an umbrella scheme,

“unit holder” is to be read in accordance with section 468(6) to (9) of ICTA,

“unit trust scheme” has the meaning given by section 1007,

“venture capital trust” and “VCT” have the same meaning as in Part 6 (see section 259(1)),

“woodlands” has the meaning given by section 996,

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“year of assessment” means a tax year, and  
 “the year 1988-1989” means the tax year 1988-1989 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way).

#### Textual Amendments

**F126** Words in s. 989 substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 16\(a\)](#); [S.I. 2008/839](#), art. 2

**F127** Words in s. 989 substituted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), s. 74(1), [Sch. 3 para. 16\(b\)](#); [S.I. 2008/839](#), art. 2

**F128** Words in s. 989 inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(12\)](#)

#### Modifications etc. (not altering text)

**C6** S. 989 applied by 1992 c. 12, s. 4(6) (as inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 295\(7\)](#) (with [Sch. 2](#)))

### 990 Meaning of “Act”

- (1) In the Income Tax Acts “Act” includes Northern Ireland legislation.
- (2) This section does not apply for the purposes of—
  - (a) this Act (see instead section 1018), or
  - (b) ITTOIA 2005 (see instead sections 879 and 880 of that Act).

### 991 Meaning of “bank”

- (1) This section has effect for the purposes of the provisions of the Income Tax Acts which apply this section.
- (2) “Bank” means—
  - (a) the Bank of England,
  - (b) a person who has permission under Part 4 of FISMA 2000 to accept deposits (but see subsection (3) for exclusions),
  - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000 which has permission under paragraph 15 of that Schedule to accept deposits (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule),
  - (d) the European Investment Bank, and
  - (e) an international organisation designated as a bank for the purposes of this section by an order made by the Treasury.
- (3) The reference to a person who has permission under Part 4 of FISMA 2000 to accept deposits does not include—
  - (a) a building society,
  - (b) a society registered within the meaning of the Friendly Societies Act 1974 (c. 46) or incorporated under the Friendly Societies Act 1992 (c. 40),
  - (c) a society registered as a credit union under the Industrial and Provident Societies Act 1965 (c. 12) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)), or

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- (d) an insurance company within the meaning of section 275 of FA 2004.
- (4) The Treasury may designate an international organisation for the purposes of this section only if the United Kingdom is a member of the organisation.

## **992 Meaning of “company”**

- (1) In the Income Tax Acts “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.
- (2) Subsection (1) needs to be read with section 468 of ICTA (authorised unit trusts).
- (3) This section does not apply for the purposes of—
  - (a) Part 6 (venture capital trusts),
  - (b) Chapters 1, 3 and 4 of Part 13 (transactions in securities and land and sales of income from occupation), and
  - (c) sections 993 and 994 (meaning of “connected” persons).

## **993 Meaning of “connected” persons**

- (1) This section has effect for the purposes of the provisions of the Income Tax Acts which apply this section.
- (2) An individual (“A”) is connected with another individual (“B”) if—
  - (a) A is B's spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B's spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B's spouse or civil partner.
- (3) A person, in the capacity as trustee of a settlement, is connected with—
  - (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual,
  - (c) any close company whose participators include the trustees of the settlement,
  - (d) any non-UK resident company which, if it were UK resident, would be a close company whose participators include the trustees of the settlement,
  - (e) any body corporate controlled (within the meaning of section 995) by a company within paragraph (c) or (d),
  - (f) if the settlement is the principal settlement in relation to one or more sub-fund settlements, a person in the capacity as trustee of such a sub-fund settlement, and
  - (g) if the settlement is a sub-fund settlement in relation to a principal settlement, a person in the capacity as trustee of any other sub-fund settlements in relation to the principal settlement.
- (4) A person who is a partner in a partnership is connected with—
  - (a) any partner in the partnership,
  - (b) the spouse or civil partner of any individual who is a partner in the partnership, and
  - (c) a relative of any individual who is a partner in the partnership.

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But this subsection does not apply in relation to acquisitions or disposals of assets of the partnership pursuant to genuine commercial arrangements.

- (5) A company is connected with another company if—
- (a) the same person has control of both companies,
  - (b) a person (“A”) has control of one company and persons connected with A have control of the other company,
  - (c) A has control of one company and A together with persons connected with A have control of the other company, or
  - (d) a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in one or more cases) a member of either group were replaced by a person with whom the member is connected.
- (6) A company is connected with another person (“A”) if—
- (a) A has control of the company, or
  - (b) A together with persons connected with A have control of the company.
- (7) In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—
- (a) one another, and
  - (b) any person acting on the directions of any of them to secure or exercise control of the company.

**Modifications etc. (not altering text)**

**C7** S. 993 applied by S.I. 2006/964, reg. 69J(10)(a) (as inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5)

## 994 Meaning of “connected” persons: supplementary

- (1) In section 993 and this section—
- “company” includes any body corporate or unincorporated association, but does not include a partnership (and see also subsection (2)),
  - “control” is to be read in accordance with section 416 of ICTA (except where otherwise indicated),
  - “principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,
  - “relative” means brother, sister, ancestor or lineal descendant,
  - “settlement” has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act), and
  - “sub-fund settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992.
- (2) For the purposes of section 993—
- (a) a unit trust scheme is treated as if it were a company, and
  - (b) the rights of the unit holders are treated as if they were shares in the company.
- (3) For the purposes of section 993 “trustee”, in the case of a settlement in relation to which there would be no trustees apart from this subsection, means any person—

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- (a) in whom the property comprised in the settlement is for the time being vested, or
- (b) in whom the management of that property is for the time being vested.

Section 466(4) does not apply for the purposes of this subsection.

- (4) If any provision of section 993 provides that a person (“A”) is connected with another person (“B”), it also follows that B is connected with A.

**Modifications etc. (not altering text)**

- C8** S. 994 applied by S.I. 2006/964, reg. 69J(10)(a) (as inserted (6.4.2008) by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), regs. 1, 5)

**995 Meaning of “control”**

- (1) This section has effect for the purposes of the provisions of the Income Tax Acts which apply this section.
- (2) In relation to a body corporate (“company A”), “control” means the power of a person (“P”) to secure—
  - (a) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or
  - (b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,that the affairs of company A are conducted in accordance with P's wishes.
- (3) In relation to a partnership, “control” means the right to a share of more than half the assets, or of more than half the income, of the partnership.

**996 Meaning of “farming” and related expressions**

- (1) In the Income Tax Acts “farming” means the occupation of land wholly or mainly for the purposes of husbandry, but does not include market gardening (see subsection (5)).
- (2) In subsection (1) “husbandry” includes—
  - (a) hop growing, and
  - (b) the breeding and rearing of horses and the grazing of horses in connection with those activities.
- (3) For the purposes of the Income Tax Acts the cultivation of short rotation coppice is regarded as husbandry and not as forestry.
- (4) In the Income Tax Acts “woodlands” does not include land on which short rotation coppice is cultivated.
- (5) In the Income Tax Acts “market gardening” means the occupation of land as a garden or nursery for the purpose of growing produce for sale.
- (6) For the purposes of this section “short rotation coppice” means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than 10 years.

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(7) In the application of this section for the purposes of section 192(1) or 303(1) of this Act or paragraph 16 of Schedule 5 to ITEPA 2003—

- (a) both references to the occupation of land, and the reference to land on which short rotation coppice is cultivated, refer to land in the United Kingdom, and
- (b) the reference to the cultivation of such coppice refers to its cultivation in the United Kingdom.

## **997 Meaning of “generally accepted accounting practice” and related expressions**

(1) In the Income Tax Acts “generally accepted accounting practice” means UK generally accepted accounting practice.

This is subject to subsection (3).

(2) In the Income Tax Acts “UK generally accepted accounting practice”—

- (a) means generally accepted accounting practice in relation 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.

(3) In relation to the affairs of a company or other entity that prepares IAS accounts, in the Income Tax Acts “generally accepted accounting practice” means generally accepted accounting practice in relation to IAS accounts.

(4) In the Income Tax Acts “for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice.

(5) In the Income Tax Acts “international accounting standards” has the same meaning as in the Corporation Tax Acts (see section 50(2) and (3) of FA 2004).

(6) In this section—

“IAS accounts” means accounts prepared in accordance with international accounting standards, and

“UK companies” means companies incorporated or formed under the law of a part of the United Kingdom.

## **998 Meaning of “grossing up”**

(1) In the Income Tax Acts references to grossing up by reference to a rate of tax are to calculating the amount (“the grossed up amount”) which after deduction of income tax at that rate would equal the amount to be grossed up (“the net amount”).

(2) The grossed up amount is the sum of the net amount and the tax deducted.

(3) The grossed up amount may also be expressed as—



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$$GA = NA + \left( NA \times \frac{R}{100 - R} \right)$$

where—

GA is the grossed up amount,

NA is the net amount, and

R is the percentage rate of tax by reference to which the net amount is to be grossed up.

### 999 Meaning of “local authority”

- (1) In the Income Tax Acts “local authority”, in relation to England and Wales, means—
- (a) a billing authority as defined in section 69 of the Local Government Finance Act 1992 (c. 14),
  - (b) a precepting authority as defined in that section,
  - (c) a body with power to issue a levy (by virtue of regulations under section 74 of the Local Government Finance Act 1988 (c. 41)),
  - (d) a body with power to issue a special levy (by virtue of regulations under section 75 of that Act),
  - (e) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies,
  - (f) an authority with power to make or determine a rate, or
  - (g) a residuary body established by order under section 22(1) of the Local Government Act 1992 (c. 19).
- (2) In the Income Tax Acts “local authority”, in relation to Scotland, means—
- (a) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c. 39),
  - (b) a joint board or committee within the meaning of the Local Government (Scotland) Act 1973 (c. 65), or
  - (c) an authority with power to requisition any sum from a council such as is mentioned in paragraph (a).
- (3) In the Income Tax Acts “local authority”, in relation to Northern Ireland, means—
- (a) an authority with power to make or determine a rate, or
  - (b) an authority with power to issue a precept, requisition or other demand for the payment of money to be raised out of a rate.
- (4) In this section “rate” means a rate—
- (a) whose proceeds are applicable for public local purposes, and
  - (b) which is leviable by reference to the value of land or property.

### 1000 Meaning of “local authority association”

- (1) In the Income Tax Acts “local authority association” means any incorporated or unincorporated association which meets conditions A and B.

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- (2) Condition A is that all of its members are local authorities, groups of local authorities or local authority associations.
- (3) Condition B is that its purpose, or primary purpose, is to protect and further the general interests of local authorities or any description of local authorities.
- (4) For the purposes of condition A, a local authority, group of local authorities or local authority association is treated as a member if it has appointed a person to be a member or is represented by a member.
- (5) And, in that case, the appointee or representative is treated as not being a member for the purpose of the condition.

### **1001 Meaning of “offshore installation”**

- (1) In the Income Tax Acts “offshore installation” means a structure which is, is to be, or has been, put to a relevant use while in water (see subsections (3) and (4)).
- (2) But a structure is not an offshore installation if—
  - (a) it has permanently ceased to be put to a relevant use,
  - (b) it is not, and is not to be, put to any other relevant use, and
  - (c) since permanently ceasing to be put to a relevant use, it has been put to a use which is not relevant.
- (3) A use is a relevant use if it is—
  - (a) for the purposes of exploiting mineral resources by means of a well,
  - (b) for the purposes of exploration with a view to exploiting mineral resources by means of a well,
  - (c) for the storage of gas in or under the shore or the bed of any waters,
  - (d) for the recovery of gas so stored,
  - (e) for the conveyance of things by means of a pipe, or
  - (f) mainly for the provision of accommodation for individuals who work on or from a structure which is, is to be, or has been, put to any of the above uses while in water.
- (4) For the purposes of this section references to a structure being put to a use while in water are to the structure being put to a use while—
  - (a) standing in any waters,
  - (b) stationed (by whatever means) in any waters, or
  - (c) standing on the foreshore or other land intermittently covered with water.
- (5) In this section “structure” includes a ship or other vessel.

### **1002 Regulations about the meaning of “offshore installation”**

- (1) The Treasury may by regulations make provision as to the meaning of “offshore installation” in the Income Tax Acts.
- (2) The regulations may—
  - (a) add to, amend or repeal any provision of section 1001,
  - (b) make different provision for different purposes, and

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- (c) contain incidental, supplemental, consequential and transitional provision and savings.

### **1003 Meaning of “oil and gas exploration and appraisal”**

- (1) In the Income Tax Acts “oil and gas exploration and appraisal” means activities carried out for the purpose of—
  - (a) searching for petroleum anywhere in an area,
  - (b) ascertaining a petroleum-bearing area's extent or characteristics, or
  - (c) ascertaining its reserves of petroleum,so that it may be determined whether the petroleum is suitable for commercial exploitation.
- (2) In this section “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17).

### **1004 Meaning of “property investment LLP”**

- (1) In the Income Tax Acts “property investment LLP” means a limited liability partnership—
  - (a) whose business consists wholly or mainly in the making of investments in land, and
  - (b) the principal part of whose income is derived from investments in land.
- (2) Whether a limited liability partnership is a property investment LLP is determined for each period of account of the partnership.

### **[<sup>F129</sup>1005] Meaning of “recognised stock exchange” etc**

- (1) In the Income Tax Acts “recognised stock exchange” means—
  - (a) any market of a recognised investment exchange which is for the time being designated as a recognised stock exchange for the purposes of this section by an order made by the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) any market outside the United Kingdom which is for the time being so designated.
- (2) An order under subsection (1) may—
  - (a) designate a market by name or by reference to any class or description of market (including, in the case of a market outside the United Kingdom, one framed by reference to any authority or approval given in a country outside the United Kingdom),
  - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) vary or revoke a previous order under that subsection.
- (3) References in the Income Tax Acts to securities which are listed on a recognised stock exchange are to securities—
  - (a) which are admitted to trading on that exchange, and

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- (b) which are included in the official UK list or are officially listed in a qualifying country outside the United Kingdom in accordance with provisions corresponding to those generally applicable in EEA states.
- (4) For this purpose “qualifying country outside the United Kingdom” means any country outside the United Kingdom in which there is a recognised stock exchange.
- (5) References in the Income Tax Acts to securities which are included in the official UK list are to securities which are included in the official list (within the meaning of Part 6 of FISMA 2000) in accordance with the provisions of that Part.
- (6) In this section—
  - “recognised investment exchange” has the same meaning as in FISMA 2000 (see section 285), and
  - “securities” includes shares and stock.]

#### Textual Amendments

**F129** S. 1005 substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 1](#)

### 1006 Meaning of “research and development”

- (1) This section has effect for the purposes of the provisions of the Income Tax Acts which apply this section.
- (2) “Research and development” means activities that fall to be treated as research and development in accordance with generally accepted accounting practice.  
 This is subject to subsection (3).
- (3) The Treasury may by regulations specify activities which—
  - (a) are to be treated as being “research and development” for the purposes of this section, or
  - (b) are to be treated as not being “research and development” for the purposes of this section.
- (4) The regulations may—
  - (a) make provision by reference to guidelines issued by the Secretary of State, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (5) Unless otherwise expressly provided, “research and development” does not include oil and gas exploration and appraisal.

### 1007 Meaning of “unit trust scheme”

- (1) In the Income Tax Acts “unit trust scheme” has the meaning given by section 237 of FISMA 2000.  
 This is subject to subsection (2).
- (2) The Treasury may by regulations provide that a unit trust scheme within the meaning given by section 237 of FISMA 2000 is not to be a unit trust scheme for the purposes of this section if the scheme is within a specified description.

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- (3) The regulations may contain incidental, supplemental, consequential and transitional provision and savings.
- (4) This section does not apply for the purposes of section 558 (approved charitable investments).

## CHAPTER 2

### OTHER INCOME TAX ACTS PROVISIONS

#### 1008 Scotland

- (1) In the application of the Income Tax Acts to Scotland—
  - “assignment” means an assignation,
  - “estate in land” includes the land, and
  - “surrender” includes renunciation.
- (2) In the application of the Income Tax Acts to Scotland, any reference to property or rights being held on trust or on trusts is a reference to the property or rights being held in trust.

#### 1009 Sources of income within the charge to income tax or corporation tax

In the Income Tax Acts a source of income is within the charge to income tax or corporation tax if that tax—

- (a) is chargeable on the income arising from it, or
  - (b) would be so chargeable if there were any income arising from it,
- and references to a person, or income, being within the charge to income tax or corporation tax are to be read in the same way.

#### <sup>F130</sup>1010 Application of Income Tax Acts to recognised investment exchanges

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#### Textual Amendments

**F130** S. 1010 repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(13\)](#), [Sch. 27 Pt. 6\(5\)](#)

#### 1011 References to married persons, or civil partners, living together

Individuals who are married to, or are civil partners of, each other are treated for the purposes of the Income Tax Acts as living together unless—

- (a) they are separated under an order of a court of competent jurisdiction,
- (b) they are separated by deed of separation, or
- (c) they are in fact separated in circumstances in which the separation is likely to be permanent.

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## **1012 Relationship between rules on highest part of total income**

- (1) This section makes provision about the relationship between rules requiring particular income to be treated as the highest part of a person's total income.
- (2) It has effect for the purposes of the Income Tax Acts except sections 535 to 537 of ITTOIA 2005 (gains from contracts for life insurance etc: top slicing relief).
- (3) If more than one of the provisions listed in subsection (4) applies in relation to a person, a provision mentioned earlier in the list has priority over a provision mentioned later in the list.
- (4) The provisions are—
  - section 465A of ITTOIA 2005 (gains from contracts for life insurance etc to be treated as highest part of total income),
  - section 404A of ITEPA 2003 (payments and other benefits on termination of employment to be treated as highest part of total income), and
  - section 16 (savings and dividend income to be treated as highest part of total income).
- (5) The provisions listed in subsection (4) have priority over—
  - section 619A(2) of ITTOIA 2005 (income treated as highest part of settlor's total income),
  - section 768(6) and (7) (income treated as arising under Chapter 3 of Part 13 to be treated as highest part of total income),
  - section 786(6) and (7) (income treated as arising under Chapter 4 of Part 13 to be treated as highest part of total income), and
  - any other provisions of the Income Tax Acts requiring income of any description to be treated as the highest part of a person's total income.
- (6) The effect of one provision having priority over another is that the second provision has effect subject to the first.

## **1013 Territorial sea of the United Kingdom**

The territorial sea of the United Kingdom is treated for the purposes of the Income Tax Acts as part of the United Kingdom.

## **1014 Orders and regulations**

- (1) This section applies to all powers under the Income Tax Acts of the Treasury or the Commissioners for Her Majesty's Revenue and Customs to make orders or regulations, other than excluded powers.
- (2) All powers under the following are excluded—
  - (a) ICTA (see instead section 828 of that Act),
  - (b) section 178(5) of FA 1989 (setting of rates of interest),
  - (c) CAA 2001 (see instead section 570B of that Act),
  - (d) ITEPA 2003 (see instead section 717 of that Act),
  - (e) Part 4 of FA 2004 (see instead section 282 of that Act),
  - (f) ITTOIA 2005 (see instead section 873 of that Act), and
  - (g) the following provisions of this Act—

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- (i) section 184(3)(b) and (c) (EIS: the unquoted status requirement (designated exchanges etc)),
  - (ii) section 295(3)(b) and (c) (venture capital trusts: the unquoted status requirement (designated exchanges etc)),
  - <sup>F131</sup>(iii) section 432(2) (gifts of shares, securities and real property to charities etc: meaning of “qualifying investment”),] and
  - (iii) section <sup>F132</sup>1005(1)] (meaning of “recognised stock exchange”).
- (3) Any orders or regulations made under a power to which this section applies must be made by statutory instrument.
- (4) Any orders or regulations made under a power to which this section applies are subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Subsection (4) does not apply if the order or regulations are made under—
  - (a) section 73A of FA 2004 (exemption for designated international organisations), or
  - (b) any of the following provisions of this Act—
    - (i) section 21(5) (indexation of starting rate limit and basic rate limit),
    - (ii) section 57 (indexation of allowances),
    - (iii) section 114 or 802 (exclusion of amounts in calculating individual's contribution to the firm),
    - (iv) section 400(4)(e) (amounts treated as contributed by an individual to investment partnership capital),
    - (v) section 897 (UK public revenue dividends: regulations about collection of income tax),
    - (vi) section 962 (regulations modifying Chapter 15 of Part 15),
    - (vii) section 979 (designated international organisations: exceptions from duties to deduct),
    - (viii) section 991(2)(e) (meaning of “bank”), or
    - (ix) section 1030(2) (power to make transitional or saving provision in connection with coming into force of this Act).
- (6) Further, subsection (4) does not apply—
  - (a) if any other Parliamentary procedure is expressly provided to apply in relation to the order or regulations, or
  - (b) if the order in question appoints a day for the purposes of any provision of the Income Tax Acts from which the provision will have effect (with or without amendments) or will cease to have effect,and is also subject to any other provision to the contrary.

#### Textual Amendments

**F131** S. 1014(2)(g)(iia) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(14\)\(a\)](#)

**F132** Word in s. 1014(2)(g)(iii) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 12\(14\)\(b\)](#)

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## **1015 Territorial scope of charges under certain provisions to which section 1016 applies**

- (1) This section applies in relation to any amount chargeable to income tax under or by virtue of any provision—
  - (a) to which section 1016 applies, and
  - (b) which is listed in Part 2 or 3 of the table in that section (provisions not in ITTOIA 2005).
- (2) An amount arising to a UK resident is chargeable to tax whether or not it is from a source in the United Kingdom.
- (3) An amount arising to a non-UK resident is chargeable to tax only if it is from a source in the United Kingdom.
- (4) References in this section to amounts which are from a source in the United Kingdom include, in the case of any amount which does not have a source, references to amounts which have a comparable connection to the United Kingdom.
- (5) This section is subject to any express or implied provision to the contrary in any provision of the Income Tax Acts.

## **1016 Table of provisions to which this section applies**

- (1) In the Income Tax Acts references to any provision to which this section applies are references to any provision listed in the following table so far as it relates to income tax (but subject to any applicable limitation in subsections (3) and (4)).
- (2) This is the table—

### PART 1

<i>Provisions of ITTOIA 2005</i>	<i>Description</i>
Chapter 18 of Part 2	Post-cessation receipts: trades, professions and vocations
Chapter 8 of Part 3	Rent receivable in connection with a UK section 12(4) concern
Chapter 9 of Part 3	Rent receivable for UK electric-line wayleaves
Chapter 10 of Part 3	Post-cessation receipts: UK property businesses
Chapter 2 of Part 4	Interest
Chapter 9 of Part 4	Gains from contracts for life insurance etc
Chapter 11 of Part 4	Transactions in deposits
Chapter 12 of Part 4	Disposals of futures and options involving guaranteed returns
Section 579	Royalties and other income from intellectual property



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Section 583	Income from disposals of know-how
Section 587	Income from sales of patent rights
Chapter 3 of Part 5	Films and sound recordings: non-trade businesses
Chapter 4 of Part 5	Certain telecommunication rights: non-trading income
Chapter 5 of Part 5	Settlements: amounts treated as income of settlor
Section 682(4)	Adjustments after the administration period
Chapter 8 of Part 5	Income not otherwise charged
Section 844(4)	Withdrawal of relief for unremittable foreign income after source ceases

## PART 2

<b>Provisions of this Act</b>	<b>Description</b>
Chapter 2 of Part 12	Accrued income profits
Section 720, 727 or 731	Transfer of assets abroad
Chapter 3 of Part 13	Transactions in land
Section 776	Sales of occupation income
Section 796	Individuals benefited by film relief
Section 804	Losses derived from exploiting licence: individuals in partnership

## PART 3

<b>Other provisions</b>	<b>Description</b>
Section 214(1)(ab) of ICTA	Chargeable payments connected with exempt distributions
Section 571(1) of ICTA	Cancellation of certificates: schemes for rationalising industry
Section 730(4) of ICTA	Transfers of income arising from securities
Section 761(1)(b)(i) of ICTA	Offshore income gains
Section 774(1) of ICTA	Transactions between dealing company and associated company
Section 780(3A)(a) of ICTA	Sale and lease-back (taxation of consideration received)
Section 781(1) of ICTA	Assets leased to traders and others

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Section 786(5)(a) of ICTA	Transactions associated with loans or credit
Section 68(2) of FA 1989	Employee share ownership trust (chargeable event)
Section 71(4) of FA 1989	Employee share ownership trust (borrowing)
Section 258(4) of CAA 2001	Special leasing
Section 479(4) of CAA 2001	Persons having qualifying non-trade expenditure
Section 394(2) of ITEPA 2003	Charge on administrator of non-approved pension scheme
Section 476(5) of ITEPA 2003	Charge on occurrence of chargeable event

(3) For the purposes of this section—

- (a) any reference to any provision of ITTOIA 2005 does not include that provision so far as relating to relevant foreign income,
- (b) the reference to Chapter 2 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to an issue of funding bonds where—
  - (i) the issue is treated under section 380 of that Act as a payment of interest, and
  - (ii) the person by or through whom they are issued is required to retain bonds under section 939(2) of this Act but it is impracticable for the person to do so,
- (c) the reference to Chapter 9 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to gains—
  - (i) which are from a policy or contract specified in section 531(3) of that Act, and
  - (ii) which do not fall within section 532 or 534 of that Act,
- (d) the reference to section 579 of ITTOIA 2005 does not include that section so far as relating to any annual payment,
- (e) the reference to Chapter 4 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to any annual payment, and
- (f) the reference to Chapter 5 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to income which falls within section 619(3) of that Act.

- (4) For the purposes of this section the reference to section 720 or 727 of this Act does not include those sections so far as relating to income falling within subsection (3) of section 745.

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## PART 17

### DEFINITIONS FOR PURPOSES OF ACT AND FINAL PROVISIONS

#### *Definitions for the purposes of Act*

#### **1017 Abbreviated references to Acts**

In this Act—

- “CAA 2001” means the Capital Allowances Act 2001 (c. 2),
- “FA”, followed by a year, means the Finance Act of that year,
- “F(No.2)A”, followed by a year, means the Finance (No.2) Act of that year,
- “FISMA 2000” means the Financial Services and Markets Act 2000 (c. 8),
- “ICTA” means the Income and Corporation Taxes Act 1988 (c. 1),
- “IHTA 1984” means the Inheritance Tax Act 1984 (c. 51),
- “ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003 (c. 1),
- “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5),
- “TCGA 1992” means the Taxation of Chargeable Gains Act 1992 (c. 12), and
- “TMA 1970” means the Taxes Management Act 1970 (c. 9).

#### **1018 “Act” to include Scottish and Northern Ireland legislation in some cases**

- (1) In the following provisions of this Act, “Act” includes an Act of the Scottish Parliament—
  - section 66 (restriction on relief unless trade is commercial),
  - section 532 (exemption for savings and investment income),
  - section 536 (exemption for miscellaneous income),
  - section 558 (approved charitable investments),
  - section 1028 (power to make consequential provision), and
  - section 1029 (power to undo changes).
- (2) In the following provisions of this Act, “Act” includes Northern Ireland legislation—
  - section 66 (restriction on relief unless trade is commercial),
  - section 114 (exclusion of amounts in calculating contribution to the firm),
  - section 532 (exemption for savings and investment income),
  - section 536 (exemption for miscellaneous income),
  - section 558 (approved charitable investments),
  - section 802 (exclusion of amounts in calculating partner's capital contribution),
  - section 1028 (power to make consequential provision), and
  - section 1029 (power to undo changes).

#### **1019 Meaning of “certificate of deposit”**

In this Act “certificate of deposit” means a document—

- (a) relating to the deposit of money in any currency,

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- (b) recognising an obligation to pay a stated principal amount to bearer or to order, with or without interest, and
- (c) by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable.

## 1020 Claims and elections

- (1) In this Act any reference to a claim or election is to a claim or election in writing or in any form authorised (in relation to the case in question) by directions under section 118 of FA 1998.
- (2) For further information about claims and elections, see TMA 1970 (in particular, section 42(2), (10) and (11) and Schedule 1A).

## 1021 Application of definitions of “connected” persons and “control”

- (1) Section 993 (meaning of “connected” persons) applies for the purposes of this Act unless otherwise indicated.
- (2) Section 995 (meaning of “control”) applies for the purposes of this Act unless otherwise indicated.

## 1022 Meaning of “debenture”

- (1) In this Act “debenture” has the meaning given by [<sup>F133</sup>section 738 of the Companies Act 2006].
- (2) This section does not apply for the purposes of sections 559, 560 and 691.

### Textual Amendments

**F133** Words in s. 1022(1) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **41** (with art. 4)

## 1023 Meaning of “double taxation arrangements”

In this Act “double taxation arrangements” means arrangements which have effect under section 788 of ICTA.

## 1024 Meaning of “gilt-edged securities”

In this Act “gilt-edged securities” means any securities which—

- (a) are gilt-edged securities for the purposes of TCGA 1992 (see Schedule 9 to that Act), or
- (b) will be such securities on the making of an order under paragraph 1 of that Schedule, if the making of the order is anticipated in the prospectus under which the securities were issued.

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## **1025 Meaning of “modified net income”**

- (1) For the purposes of this Act a person's modified net income for a tax year (“year X”) is the person's net income for year X calculated in accordance with Steps 1 and 2 of section 23 (calculation of income tax liability) as modified by subsection (2).
- (2) In applying Steps 1 and 2 of section 23, ignore—
  - (a) any non-qualifying income included in the person's total income (see section 1026),
  - (b) any relief under Chapter 2 of Part 4 for a loss incurred or treated as incurred, or a payment made, in a tax year later than year X,
  - (c) any reliefs to which the person may be entitled under Chapter 4 of Part 8,
  - (d) any adjustment of profits resulting from a claim under Chapter 16 of Part 2 of ITTOIA 2005 (averaging profits of farmers and creative artists), if year X is the earlier of the tax years in relation to which the claim is made,
  - (e) any adjustment resulting from an election under section 257 of ITTOIA 2005 (election to carry back post-cessation receipts), and
  - (f) any relief or adjustment resulting from the making, amendment or revocation of a claim for relief, if the claim, amendment or revocation would have been out of time but for section 224(4) of ITTOIA 2005 (averaging profits of farmers and creative artists: extension of deadline for claiming other reliefs).
- (3) This section applies for the purposes of section 427 as if subsection (2)(c) were omitted.
- (4) This section applies for the purposes of Chapter 9 of Part 9 and Chapter 13 of Part 15 as if for subsection (2)(c) there were substituted—

“(c) any reliefs to which the person may be entitled under section 505.”.
- (5) In this section “claim” includes an election or notice.

## **1026 Meaning of “non-qualifying income” for the purposes of section 1025**

For the purposes of section 1025 an amount included in a person's total income is non-qualifying income if it is—

- (a) income on which income tax is treated as paid under section 399(2) or 400(2) of ITTOIA 2005 (distributions from UK resident companies etc on which there is no tax credit),
- (b) income on which an individual is liable to income tax as a result of section 413(2) of ITTOIA 2005 or trustees are so liable as a result of section 413(3) of that Act (stock dividend income),
- (c) income on which any person is liable to income tax under Chapter 6 of Part 4 of ITTOIA 2005 (release of loan to participator in a close company),
- (d) income on which an individual is liable to income tax as a result of section 465 of ITTOIA 2005 or trustees are so liable as a result of section 467 of that Act (gains from contracts for life insurance etc), being income to which section 530 of that Act applies (income tax treated as paid etc),
- (e) income which is included in the aggregate income of an estate as a result of section 664(2)(c), (d) or (e) of ITTOIA 2005 (income arising to personal representatives and corresponding to income within paragraph (b), (c) or (d)),
- (f) income on which income tax is treated as paid under section 685A(3) of ITTOIA 2005 (settlor-interested settlements), or

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- (g) an amount that a person is treated as having received under section 804(5B) of ICTA (double taxation relief: special rules about overlap profit).

### *Final provisions*

#### **1027 Minor and consequential amendments**

Schedule 1 (minor and consequential amendments) has effect.

#### **1028 Power to make consequential provision**

- (1) The Treasury may by order make such provision as the Treasury consider appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) may not be exercised after 5 April 2010.
- (3) An order under this section may amend, repeal or revoke any provision made by or under an Act.
- (4) An order under this section may contain provision having retrospective effect.
- (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

#### **1029 Power to undo changes**

- (1) The Treasury may by order make such provision as the Treasury consider appropriate, in relation to a case in which the Treasury consider that a provision of this Act changes the effect of the law, for the purpose of returning the effect of the law to what it was immediately before 6 April 2007.
- (2) The power conferred by subsection (1) may not be exercised after 5 April 2010.
- (3) An order under this section may amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (4) An order under this section may contain provision having retrospective effect.
- (5) An order under this section may contain incidental, supplemental, consequential and transitional provision and savings.

#### **1030 Transitional provisions and savings**

- (1) Schedule 2 (transitional provisions and savings) has effect.
- (2) The Treasury may by order make such transitional or saving provision as the Treasury consider appropriate in connection with the coming into force of this Act.
- (3) An order under subsection (2) may contain provision having retrospective effect.
- (4) At any time before section 1014 of this Act (orders and regulations) comes into force, section 828(4) of ICTA (order-making powers excluded from negative resolution procedure) has effect as if it included a reference to an order made under subsection (2) of this section.

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#### **Commencement Information**

- II** S. 1030 wholly in force at 6.4.2007; s. 1030(1) in force at 6.4.2007 see s. 1034(1); s. 1030(2)-(4) in force at 20.3.2007 see s. 1034(4)(b)

### **1031 Repeals and revocations**

Schedule 3 (repeals and revocations, including of spent enactments) has effect.

### **1032 Index of defined expressions**

- (1) Schedule 4 (index of defined expressions that apply for the purposes of this Act) has effect.
- (2) That Schedule lists the places where some of the expressions used in this Act are defined or otherwise explained.

### **1033 Extent**

- (1) This Act extends to England and Wales, Scotland and Northern Ireland (but see subsection (2)).
- (2) An amendment, repeal or revocation contained in Schedule 1 or 3 has the same extent as the provision amended, repealed or revoked.

### **1034 Commencement**

- (1) This Act comes into force on 6 April 2007 and has effect—
  - (a) for income tax purposes, for the tax year 2007-08 and subsequent tax years, and
  - (b) for corporation tax purposes, for accounting periods ending after 5 April 2007.
- (2) Subsection (1) is subject to subsections (3) and (4).
- (3) The following—
  - (a) Part 5 (enterprise investment scheme),
  - (b) Part 3 of Schedule 1 (consequential amendment associated with Part 5), and
  - (c) Part 2 of Schedule 3 (repeals so associated),do not have effect in relation to shares issued before 6 April 2007.  
This is subject to Schedule 2 (transitional provisions and savings).
- (4) Subsection (1) does not apply to the following provisions of this Act (which therefore come into force on the day on which this Act is passed)—
  - (a) in Part 15, section 852, and
  - (b) in this Part, sections 1017, 1018, 1028, 1029, 1030(2) to (4) and 1033, this section and section 1035.

### **1035 Short title**

This Act may be cited as the Income Tax Act 2007.

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