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STATUTORY INSTRUMENTS

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**2004 No. 2310**

**INCOME TAX**

The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6  
(Consequential Amendment of Enactments) Order 2004

<i>Made</i>	- - - -	<i>7th September 2004</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th September 2004</i>
<i>Coming into force</i>	- -	<i>28th September 2004</i>

The Treasury, in exercise of the powers conferred upon them by paragraph 8 of Schedule 23A to the Income and Corporation Taxes Act 1988(1) and section 46 of the Finance Act 2004(2), make the following Order:

**Citation, commencement, effect and interpretation**

1.—(1) This Order may be cited as the Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004.

(2) This Order shall come into force on 28th September 2004 and shall have effect in relation to accounting periods beginning on or after 1st April 2004, subject to the transitional provisions in sections 43 and 44 of the Finance Act 2004 and in paragraphs 12(4) and 13(4) of the Schedule to this Order.

(3) In this Order—

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(3);

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988; and

expressions which are defined in section 43 of the Finance Act 2004 have the same meaning as they have in that section.

**Amendments to enactments in consequence of sections 38, 40 and 45 of, and Schedule 6 to, the Finance Act 2004**

2. The Schedule to these Regulations, which contains amendments in consequence of the provisions of sections 38, 40 and 45 of, and Schedule 6 to, the Finance Act 2004, has effect.

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(1) 1988 c. 1: Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31).  
(2) 2004 c. 12.  
(3) 2003 c. 1.

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7th September 2004

*Nick Ainger*  
*Derek Twigg*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

SCHEDULE

Regulation 2

EXPENSES OF COMPANIES WITH INVESTMENT  
BUSINESS AND INSURANCE COMPANIES

*Finance Act 1950*

**Treatment of enemy debts written off during World War II**

- 1.—(1) Amend the Finance Act 1950(4) as follows.
- (2) In section 39(3) for paragraph (b) of the proviso substitute—
  - “(b) the expenses shall not be allowed—
    - (i) as a deduction under section 75(1) of the Income and Corporation Taxes Act 1988;  
or
    - (ii) in the computation of an expenses deduction for the purposes of Step 1 of section 76(7) of that Act.”.

*Taxes Act 1988*

2. The Taxes Act 1988 is amended as follows.

**Relief for contributions to certain bodies**

3.—(1) Section 79 (contributions to local enterprise agencies)(5), section 79A (contributions to training and enterprise councils, business link organisations and local enterprise companies)(6), and section 79B (contributions to urban regeneration companies)(7) are each amended as follows.

(2) In subsection (2) (contribution by investing company treated as expenses of management) for “an investment company” substitute “a company with investment business”.

- (3) After subsection (2) insert—

“(2A) Where any such contribution is made by a company in relation to which section 76 applies (expenses of insurance companies) any expenditure allowable as a deduction under subsection (1) above shall for the purposes of that section be treated as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section.”.

**Costs of establishing share option or profit sharing schemes: relief**

- 4.—(1) Section 84A(8) is amended as follows.

(2) In subsection (2) for paragraph (b) (expenditure to be treated as expenses of management) substitute—

“(b) if the company is one with investment business, shall be treated as expenses of management deductible under section 75 to the extent that it otherwise would not be, or

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(4) 1950 c. 15.

(5) There are amendments which are not relevant for present purposes.

(6) Section 79A was inserted by section 76 of the Finance Act 1990 (c. 29) and amended by section 145 of the Finance Act 1994 (c. 9) and section 88 of the Finance Act 2000 (c. 17).

(7) Section 79B was inserted by section 180 of the Finance Act 2003 (c. 14).

(8) Section 84A was inserted by section 42 of the Finance Act 1991 and amended by paragraph 1 of Schedule 7 to the Finance Act 1998 (c. 36) and paragraph 11 of Part 1 of Schedule 6 and paragraph 92 of Part 11 of Schedule 7 to ITEPA.

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(c) if the company is one in relation to which section 76 applies, shall be treated for the purposes of that section as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section to the extent that it otherwise would not be.”.

(3) In subsection (3) (timing rule where approval given more than 9 months after end of period of account in which expenditure incurred) for the words following paragraph (b) substitute—  
“for the purpose of applying subsection (2) above the expenditure shall be treated in accordance with subsection (3ZA) below.”.

(4) After subsection (3) insert—

“(3ZA) Where this subsection applies—

- (a) in applying subsection (2)(a) above, the expenditure shall be treated as incurred in the period of account in which the approval is given (and not the period of account mentioned in subsection (3)(b) above),
- (b) in applying subsection (2)(b) or (c) above, the expenditure shall be treated as referable to the accounting period in which the approval is given.”.

#### **Payment to trustees of approved profit sharing schemes**

5.—(1) Section 85(9) is amended as follows.

(2) In subsection (1), for paragraph (b) (expenditure to be treated as expenses of management) substitute—

- “(b) if that company is a company with investment business, shall be treated as expenses of management deductible under section 75, or
- (c) if that company is one in relation to which section 76 applies, shall be treated as expenses payable for the purposes of that section.”.

#### **Costs of establishing employee share ownership trusts**

6.—(1) Section 85A(10) is amended as follows.

(2) In subsection (2)—

- (a) in paragraph (a), omit “or”; and
- (b) for paragraph (b) (expenditure to be treated as expenses of management) substitute—
  - “(b) if the company is a company with investment business, shall be treated as expenses of management deductible under section 75 to the extent that it otherwise would not be, or
  - (c) if the company is one in relation to which section 76 applies, shall be treated for the purposes of that section as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section to the extent that it otherwise would not be.”.

(3) In subsection (3) (timing rule where trust established more than 9 months after end of period of account in which expenditure incurred) for the words following paragraph (b) substitute—

“for the purpose of applying subsection (2) above, the expenditure shall be treated in accordance with subsection(3A) below.”.

(4) After subsection (3) insert—

“(3A) Where this subsection applies—

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(9) Section 85 was amended by paragraph 1 of Schedule 7 to the Finance Act 1998.

(10) Section 85A was inserted by section 43 of the Finance Act 1991 and amended by paragraph 1 of Schedule 7 to the Finance Act 1998.

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- (a) in applying subsection (2)(a) above, the expenditure shall be treated as incurred in the period of account in which the trust is established (and not the period of account mentioned in subsection (3)(b) above),
- (b) in applying subsection (2)(b) or (c) above, the expenditure shall be treated as referable to the accounting period in which the trust is established.”.

### **Employees seconded to charities and educational establishments**

7.—(1) Section 86(11) is amended as follows.

(2) In subsection (1) (expenditure on seconded employees deductible as if employee’s service were available for employer’s trade etc) for “notwithstanding anything in section 74 or 75, any expenditure incurred (or disbursed)” substitute “notwithstanding anything in section 74, 75 or 76, any expenditure incurred”.

(3) In subsection (2) (definitions) for the definition of “deductible” substitute—

““deductible” means—

- (a) deductible as an expense in computing the profits of the employer to be charged under Case I or II of Schedule D,
  - (b) deductible as expenses of management for the purposes of section 75, or
  - (c) falling to be brought into account in accordance with section 76 as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section,
- as the case may be.”.

### **Charitable donations: contributions to agent’s expenses**

8.—(1) Section 86A(12) is amended as follows.

(2) In subsection (2), for paragraph (b) (expenditure to be treated as expenses of management for the purposes of sections 75 and 76) substitute—

“(b) if the employer is a company with investment business, shall be treated as expenses of management deductible under section 75.”.

### **Payments to Export Credits Guarantee Department**

9.—(1) Section 88(13) is amended as follows.

(2) For paragraph (b) (expenditure to be treated as expenses of management for the purposes of sections 75 and 76) substitute—

“(b) if that person is a company with investment business, in the expenses of management that are deductible under section 75 in computing the company’s profits for the purpose of corporation tax;”.

### **Additional payments to redundant employees**

10.—(1) Section 90(14) is amended as follows.

(2) For subsection (1) (expenditure that would be allowable as a deduction or eligible for relief under section 75 or 76 as expenses of management) substitute—

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(11) Section 86 was amended by paragraph 1 of Schedule 7 to the Finance Act 1998 and section 58 of the Finance Act 1999 (c. 16).

(12) Section 86A was inserted by section 69 of the Finance Act 1993 and amended by paragraph 1 of Schedule 7 to the Finance Act 1998 and paragraph 13 of Schedule 6 to ITEPA.

(13) Section 88 was amended by paragraph 1 of Schedule 7 to the Finance Act 1998.

(14) Section 90 was amended by paragraph 1 of Schedule 7 to the Finance Act 1998.

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“(1) Where a payment is made by way of addition to a redundancy payment or to the corresponding amount of any other employer’s payment and the additional payment would be—

- (a) allowable as a deduction in computing for the purposes of Schedule D the profits or losses of a trade, profession or vocation,
- (b) deductible under section 75 as expenses of management of a business, or
- (c) regarded as expenses payable for the purposes of section 76,

but for the permanent discontinuance of the trade, profession, vocation or business, the additional payment shall, subject to subsection (2) below, be so allowable, deductible or regarded notwithstanding that discontinuance.

If the additional payment—

- (i) is made after discontinuance, or
- (ii) is for the purposes of section 75 or 76 referable to an accounting period beginning after the discontinuance,

it shall be treated as made, or (as the case may be) as referable to the accounting period ending, on the last day on which the trade, profession, vocation or business was carried on.”.

(3) After subsection (1) insert—

“(1A) To the extent that the additional payment would, apart from this subsection, be regarded as expenses payable for the purposes of Step 5 in subsection (7) of section 76, it shall not be so regarded for the purposes of that subsection (or of subsection (1) above so far as relating to that section).”.

### **Other grants under Industrial Development Act 1982 etc**

**11.**—(1) Section 93 is amended as follows.

(2) In subsection (1) (which includes provision about certain payments to an investment company) for “an investment company” substitute “a company with investment business”.

### **Schedule A losses**

**12.**—(1) Section 392A(15) is amended as follows.

(2) For subsection (3) (investment company ceasing to carry on Schedule A business) substitute—

- “(3) Where a company with investment business—
- (a) ceases to carry on a Schedule A business, but
  - (b) continues to be a company with investment business,

any Schedule A loss that cannot be used under the preceding provisions shall be carried forward to the succeeding accounting period and be treated for the purposes of section 75 as if it were expenses of management deductible for that period.”.

(3) In subsection (4) (definitions) in paragraph (b) (definition of “investment company”) for “investment company” substitute “company with investment business”.

(4) Any loss which would, apart from this sub-paragraph, have fallen to be carried forward under section 392A(3) of the Taxes Act 1988 and treated as if it had been disbursed as expenses of management for the first accounting period of a company to begin on or after 1st April 2004 shall be treated as if that provision instead provided for the loss to be carried forward and treated for the purposes of section 75 of that Act as if it were expenses of management deductible for that period.

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(15) Section 392A was inserted by paragraph 28 of Schedule 5 to the Finance Act 1998.

### **Write-off of government investment**

13.—(1) Section 400(16) is amended as follows.

(2) In subsection (2) (a body’s tax losses) for paragraph (b) (expenses of management investment company) substitute—

“(b) in the case of a company with investment business, within the meaning of Part 4, any such excess as is mentioned in subsection (8) of section 75 which falls to be treated in accordance with subsection (9) of that section;”.

(3) In paragraph (bb) of that subsection, for sub-paragraph (ii) (losses treated under section 392A(3) as disbursed in the next accounting period) substitute—

“(ii) under section 392A(3) are to be carried forward to the next accounting period and treated for the purposes of section 75 as if they were expenses of management deductible for that period;”.

(4) The amendments made by this article also have effect (in addition to their application for the purposes of the periods mentioned in article 1(2)) for the purpose of determining a body’s tax losses for an accounting period which—

- (a) begins before 1st April 2004; and
- (b) ends on or after 31st March 2004.

(5) In section 400(2)—

- (a) the references in paragraph (b) to subsections (8) and (9) of section 75 include a reference to the old section 75(3), as read with section 43 of the Finance Act 2004, and
- (b) the reference in paragraph (bb)(ii) to section 392A(3) includes a reference to that provision as read with paragraph 12(4) of this Schedule.

### **Group relief: meaning of “management expenses” in section 403**

14.—(1) Section 403ZD (other amounts available by way of group relief)(17) is amended as follows.

(2) For subsection (4) (meaning of “management expenses” in section 403) substitute—

“(4) Management expenses means the aggregate of the amounts deductible under section 75(1) (expenses of management of company with investment business) by the surrendering company for this period.

It does not include an amount deductible by virtue only of section 75(9) or 392A(3) (amounts carried forward from earlier periods).”.

(3) Omit subsection (5) (which is rendered unnecessary by section 76 no longer applying section 75).

(4) In section 403ZD(4)—

- (a) the reference to section 75(9) includes a reference to the old section 75(3), as read with section 43 of the Finance Act 2004, and
- (b) the reference to section 392A(3) includes a reference to that provision as read with paragraph 12(4) of this Schedule.

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(16) Section 400 was amended by paragraph 35 of Schedule 2 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 8(5) of Schedule 14 to the Finance Act 1993, paragraph 36 of Schedule 5 to the Finance Act 1998, paragraph 35 of Schedule 2 to the Capital Allowances Act 2001 (c. 2) and paragraph 87 of Part 1 of Schedule 2 to S.I.1999/1870.

(17) Section 403ZD was substituted for the original section 403 by paragraph 29 of Schedule 5 to the Finance Act 1998 and amended by paragraph 2(2) of Schedule 30 to the Finance Act 2002 (c. 23).

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### **Computation of gross profits**

**15.**—(1) Section 403ZE(18) is amended as follows.

(2) In subsection (1) (gross profits for surrender period) in paragraph (b)(ii) (no deduction by virtue of section 75(3) of the Taxes Act 1988) for “75(3)” substitute “75(9)”.

(3) In section 403ZE(2)(b)(ii), the reference to section 75(9) of the Taxes Act 1988 includes a reference to the old section 75(3).

(4) Omit subsection (2) (which is rendered unnecessary by section 76 no longer applying section 75).

### **Limitation of group relief in relation to certain dual resident companies**

**16.**—(1) Section 404 is amended as follows.

(2) In subsection (2)(c) (accounting period for which expenses of management are disbursed)(19) for “disbursed” substitute “deductible”.

(3) The amendment made by sub-paragraph (2) has effect in any case where the accounting period referred to in section 404(2) of the Taxes Act 1988 begins on or after 1st April 2004.

### **Losses from Schedule A business or overseas property business**

**17.**—(1) Section 432AB(20) is amended as follows.

(2) For subsection (3) (loss to be treated as expenses of management under section 76 disbursed for the period in which the loss arose) substitute—

“(3) So far as a loss is referable to basic life assurance and general annuity business, it shall be treated for the purposes of section 76 as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section.”.

### **General annuity business**

**18.**—(1) Section 437(21) is amended as follows.

(2) In subsection (1A) (new annuities to be brought into account by treating an amount as a sum disbursed as expenses of management) for the words from “as a sum” to the end of the subsection substitute—

“as expenses payable which fall to be brought into account for that period at Step 3 in section 76(7)”.

### **Transfers of business**

**19.**—(1) Section 444A(22) is amended as follows.

(2) For subsection (2) (treatment of expenses of management) substitute—

“(2) Any expenses payable which (assuming the transferor had continued to carry on the business transferred after the transfer) would have fallen to be brought into account by the transferor in determining the deduction for expenses payable to be allowed under section 76 in computing profits for an accounting period following the period which ends with the day on which the transfer takes place shall, instead, be brought into account under and in

(18) Section 403ZE was substituted for the original section 403 by paragraph 29 of Schedule 5 to the Finance Act 1998.

(19) Section 404 has been amended: the relevant amendment is that made by paragraph 37(2) of Schedule 5 to the Finance Act 1998.

(20) Section 432AB was inserted by paragraph 39 of Schedule 5 to the Finance Act 1998.

(21) Section 437 has been amended. The relevant amendments are those made by paragraphs 5 and 18 of Schedule 7 to the Finance Act 1991, section 67(1) and (7) of the Finance Act 1997, and paragraph 6 of Schedule 33 to the Finance Act 2003.

(22) Section 444A was inserted by paragraph 7 of Schedule 9 to the Finance Act 1990. There are amendments which are not relevant for present purposes.



accordance with that section by the transferee as expenses payable by him (and giving effect in the case of acquisition expenses, to section 86(6) to (9) of the Finance Act 1989).”.

(3) In subsection (4) (treatment of acquisition expenses) for “expenses of management of the transferee” substitute “expenses payable by the transferee”.

### **Authorised unit trusts**

**20.** Section 468(4) is repealed.

### **Interest distributions**

**21.**—(1) Section 468L(**23**) is amended as follows.

(2) In subsection (6)(a) for “sums disbursed as expenses of management” substitute “expenses of management”.

### **Credit unions**

**22.**—(1) Section 487 is amended as follows.

(2) In subsection (4) (credit union not to be regarded as an investment company for purposes of section 75 or Part 2 of the Capital Allowances Act)(**24**) for “an investment company” substitute “a company with investment business”.

### **Business entertaining expenses**

**23.**—(1) Section 577(**25**) is amended as follows.

(2) In subsection (1)(a) (expenses not to be included in computing expenses of management in respect of which may be given under the Tax Acts)—

(a) after “and such expenses” insert “(i)”, and

(b) after “the Tax Acts;” insert—

“and

(ii) shall not be brought into account under section 76 as expenses payable”.

### **Expenditure involving crime**

**24.**—(1) Section 577A(**26**) is amended as follows.

(2) In subsection (2) (expenditure not to be included in computing expenses of management in respect of which relief may be given under the Tax Acts)—

(a) after “above” insert “(a)”, and

(b) after “the Tax Acts” insert—

“; and

(b) shall not be brought into account under section 76 as expenses payable”.

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(23) Section 486L was inserted by paragraph 7 of Schedule 14 to the Finance Act 1994 (c. 9). There are amendments which are not relevant for present purposes.

(24) Section 487 has been amended: the relevant amendment is that made by paragraph 40 of Schedule 2 to the Capital Allowances Act 2001.

(25) Section 577 has been amended: relevant amendments are those made by paragraph 1 of Schedule 7, and Part III(4) of Schedule 27 to the Finance Act 1998, paragraph 51 of Schedule 2 to the Capital Allowances Act 2001 and paragraph 62 of Schedule 6 to ITEPA.

(26) Section 577A was inserted by section 123 of the Finance Act 1993: the relevant amendments are those made by section 141 of the Finance Act 1994 and paragraph 1 of Schedule 7, and Part III(4) of Schedule 27, to the Finance Act 1998.

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### **Expenditure on car hire**

**25.**—(1) Section 578A(27) is amended as follows.

(2) In subsection (1) (amounts for which the section provides a reduction) in paragraph (b) for “an investment company” substitute “a company with investment business”.

(3) In subsection (1), at the end of paragraph (b) insert—

“or

(bb) which can be brought into account under section 76 as expenses payable,”.

### **Statutory redundancy payments**

**26.**—(1) Section 579(28) is amended as follows.

(2) For subsection (3) (amount of payment to be allowable as expenses of management eligible for relief under section 75 or 76 etc) substitute—

“(3) Where a redundancy payment or other employer’s payment is made in respect of employment wholly in a business carried on by the employer and—

(a) expenses of management of the business are deductible under section 75, or

(b) a deduction for expenses payable falls to be allowed in accordance with section 76 in computing profits of the business,

the amount of the redundancy payment, or the corresponding amount of the other employer’s payment, shall (to the extent that it would not otherwise fall to be so treated) be deductible under section 75 as expenses of management or as the case may be, be included at Step 1 in section 76(7).

(3A) If in a case where subsection (3) above applies, the payment in question is for the purposes of section 75 or 76 referable to an accounting period beginning after discontinuance, it shall be treated as referable to the accounting period ending on the last day on which the business was carried on.”.

### **Gifts of shares, securities and real property to charities etc**

**27.**—(1) Section 587B(29) is amended as follows.

(2) In subsection (8) (disposal by company carrying on life assurance business) in paragraph (b) (i), for “an expense of management” substitute “expenses payable falling to be brought into account at Step 3 in section 76(7)”.

### **Training courses for employees**

**28.**—(1) Section 588(30) is amended as follows.

(2) For subsection (4) (modification of subsection (3) for expenses of management) substitute—

“(4) Where the employer is a company with investment business or a company carrying on life assurance business, subsection (3) above shall have effect with the substitution for the words following paragraph (b) of—

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(27) Section 578A was inserted by paragraph 52 of Schedule 2 to the Capital Allowances Act 2001 and amended by paragraph 11 of Part 2 of Schedule 12 to the Finance Act 2001.

(28) There are amendments which are not relevant for present purposes.

(29) Section 587B was inserted by section 43 of the Finance Act 2000, and amended by section 97 of the Finance Act 2002, section 139 of the Finance Act 2004 and articles 13 and 40 of S.I. 2001/3629.

(30) Section 588 has been amended: the relevant amendment is that made by paragraph 67 of Part 1 of Schedule 6 to ITEPA.

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“then, if and so far as that expenditure would not, apart from this subsection, fall to be so deductible or brought into account, it shall—

- (i) in a case where the employer is a company with investment business, be deductible as expenses of management under section 75, or
- (ii) in a case where the employer is a company carrying on life assurances business, be brought into account under section 76 as expenses payable.”.”

(3) After subsection (5) (consequences of failure to meet condition) insert—

“(5A) The reference in subsection (5)(b) above to a deduction on account of any expenditure includes a reference to bringing an amount into account in determining the amount of the deduction to be made under section 76.”.

### **Counselling services for employees**

**29.**—(1) Section 589A(31) is amended as follows.

(2) For subsection (9) (modification of subsection (8) for expenses of management) substitute—

“(9) Where the employer is a company with investment business or a company carrying on life assurance business, subsection (8) above shall have effect as if for the words from “so deductible” onwards there were substituted—

“so deductible or brought into account, it shall—

- (a) in a case where the employer is a company with investment business, be deductible as expenses of management under section 75, or
- (b) in case where the employer is a company carrying on life assurance business, be brought into account under section 76 as expenses payable.”.”

### **Exempt approved schemes**

**30.**—(1) Section 592(32) is amended as follows.

(2) For subsection (4) (deduction of employer’s contributions) substitute—

“(4) This subsection makes provision about an employer’s entitlement to relief in respect of contributions paid by the employer the pension scheme in respect of any individual, and accordingly—

- (a) for the purposes of Case I or II of Schedule D—
  - (i) the contributions are to be treated as not being payments of a capital nature to the extent that they otherwise would be, and
  - (ii) if they are allowed to be deducted in computing the amount of the profits of the employer, they are deductible in computing the amount of the profits for the period of account in which they are paid;
- (b) for the purposes of section 75 (expenses of management: companies with investment business), the contributions—
  - (i) are to be treated as being expenses of management to the extent that they otherwise would not be, and
  - (ii) are referable to the accounting period in which they are paid;

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(31) Section 589A was inserted by section 108 of the Finance Act 1993: the relevant amendment is that made by paragraph 1 of Schedule 7 to the Finance Act 1998.

(32) There are amendments which are not relevant for present purposes. Section 592 is prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

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(c) for the purposes of section 76 (expenses of insurance companies), the contributions—

(i) are to be brought into account at Step 1 in subsection 7 of that section to the extent that they otherwise would not be, and

(ii) are referable to the accounting period in which they are paid.”

(3) In subsection (5) (limit on amount that may be deducted under subsection (4)) for “be deducted under subsection (4) above” substitute the following paragraphs—

“(a) be deducted under paragraph (a) of subsection (4) above,

(b) be deductible under paragraph (b) of that subsection, or

(c) be included at Step 1 in section 76(7).”

(4) For subsection (6) (power of Board to direct sum not paid by way of ordinary annual contribution to be treated as expense incurred in chargeable period in which paid or to be spread over period of years) substitute—

“(6) A sum not paid by ordinary way of annual contribution shall for the purposes of subsection (4) above be treated, as the Board may direct, either—

(a) as an expense deductible for the chargeable period in which the sum is paid,

(b) as expenses of management deductible under section 75 for that chargeable period, or

(c) for the purposes of section 76, as expenses payable referable to that chargeable period,

or as an expense to be spread over such period of years as the Board think proper.”

### **Social security benefits and contributions**

**31.**—(1) Section 617(33) is amended as follows.

(2) In subsection (4) (exception from subsection (3) of certain contributions) in paragraph (b) (expenses of management etc) for “under that section as applied by section 76” substitute—

“falls to be brought into account under section 76 as expenses payable”.

### **Sale and lease-back: limitation on tax reliefs**

**32.**—(1) Section 779(34) is amended as follows.

(2) In subsection (13)(d) (deductions by way of relevant tax relief), for “allowance of a payment” substitute “a deduction”.

### **Assets leased to traders and others**

**33.**—(1) Section 781(35) is amended as follows.

(2) In subsection (4)(c) (deductions by way of tax relief to which subsection (1) applies), for “allowance of a payment” substitute “a deduction”.

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(33) Section 617 has been amended: the relevant amendments are those made by section 65 of the Finance Act 1997 (c. 16), section 61 of the Finance Act 1999 and paragraph 87 of Part 1 of Schedule 6 to ITEPA.

(34) There are amendments which are not relevant for present purposes.

(35) There are amendments which are not relevant for present purposes.

### **Limits on credit for foreign tax: corporation tax**

**34.**—(1) Section 797(**36**) is amended as follows.

(2) In subsection (3) (power of company to allocate deductions against such of its profits as it thinks fit after “expenses of management” insert “expenses payable (within the meaning of section 76(1))”.

### **Share incentive plans: corporation tax deductions**

**35.**—(1) Schedule 4AA(**37**) is amended as follows.

(2) In paragraph 1 (introductory) in sub-paragraph (4) for “investment companies” substitute “companies with investment business”.

(3) In paragraph 7 (deduction for costs of setting up plan) in sub-paragraph (3) (approval given more than 9 months after end of period in which expenses incurred) for “incurred in” substitute “deductible for”.

(4) In paragraph 13 (application of provisions to expenses of management of investment companies etc) for sub-paragraphs (1) and (2) substitute—

“(1) The provisions of this Schedule apply in relation to—

- (a) companies with investment business, and
- (b) companies in relation to which section 76 applies (expenses of insurance companies),

in accordance with the following provisions.

(2) The provisions of this Schedule which allow a deduction in calculating the profits of a trade apply—

- (a) in relation to a company with investment business, to treat amounts as expenses of management, and
- (b) in relation to companies in relation to which section 76 applies, to treat amounts as expenses payable falling to be brought into account at Step 1 in section 76(7).”.

(5) The heading to paragraph 13 accordingly becomes “Application of provisions to expenses of management of companies with investment business etc”.

### **Modification of the Taxes Act 1988 in relation to overseas life insurance companies**

**36.**—(1) Schedule 19AC(**38**) is amended as follows.

(2) For paragraph 5 substitute—

“**5.** After subsection (3) of section 76 there shall be treated as inserted the following subsection—

“(3A) In its application to an overseas life insurance company subsection (3) shall have effect as if—

- (a) in a case where the company is not an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000(**39**), the reference to the Form 40 (revenue account) were a reference to the Form 40 relating only to the long-term business carried on by it at a permanent establishment in the UK, and

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(36) There are amendments which are not relevant for present purposes.

(37) Schedule 4AA was inserted by paragraph 108 of Part 1 of Schedule 6 to ITEPA.

(38) Schedule 19AC was inserted by paragraph 1 of Schedule 9 to the Finance Act 1993.

(39) 2000 c. 8.

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- (b) in a case where it is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, the reference to “expenses brought into account in line 12, 22 or 25 of Form 40 in the periodical return of the company for a period of account” were a reference to so much of the expenses included in Item II.8 or 9(a) of the Profit and Loss account included in accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC) as are attributable to permanent establishment in the United Kingdom through which the company carries on life assurance business.”.

**5ZA.** After subsection (11) there shall be treated as inserted the following subsections—

“(11A) In subsection (11) the reference in paragraph (a) of the definition of “the relevant income” to income and gains shall be treated as a reference to so much of the income and gains mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2)(40), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(11B) In that subsection the reference in paragraph (b) of that definition to distributions shall be treated as a reference to so much of the distributions mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.”.

### **Manufactured overseas dividends**

**37.**—(1) Schedule 23A(41) is amended as follows.

(2) Paragraph 4(42) is amended as follows.

(3) After sub-paragraph (1) insert—

“(1A) Where a manufactured overseas dividend is paid as set out in sub-paragraph (1) above it shall be treated—

- (a) as an expense of the trade where a company carries on a trade to which that payment relates;
- (b) where a company has investment business to which the payment relates, for the purposes of section 75 as expenses of management;
- (c) in the case of a company carrying on life assurance business—
  - (i) so far as the payment is referable to basic life assurance and general annuity business, for the purposes of section 76 as if it were an expense payable falling to be brought into account at Step 3 of subsection (7) of that section, and
  - (ii) the payment is to be treated as referable to basic life assurance and general annuity business to the extent that the overseas dividend of which it is representative is or would, if it were received by the company, be so referable by virtue of section 432A.”.

(4) In sub-paragraph (2)—

- (a) after “treated”, insert “, except in determining whether it is deductible,”;

(40) This section was inserted by section 149 of the Finance Act 2003.

(41) Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991.

(42) Paragraph 4 has been amended: the relevant amendment is that made by paragraph 1(5) of Schedule 30 to the Finance Act 2002.

- (b) in paragraph (b)—
  - (i) for “sections 338B(4) and 350(4)” substitute “section 350(4)”; and
  - (ii) for “references” substitute “reference”.
- (5) After sub-paragraph (2) insert—
  - “(2A) Sub-paragraph (10) of paragraph 3 applies for the construction of the reference in sub-paragraph (2) above to an amount being deductible as it applies to references in that paragraph.”.
- (6) Paragraph 7 is amended as follows.
- (7) In sub-paragraph (1) for “notwithstanding anything in paragraphs 2 to 4 above.” substitute—  
“notwithstanding anything in paragraphs 2 or 3 above or anything in paragraph 4 other than in sub-paragraph (1A).”.

### **Controlled foreign companies: relief against liability for tax in respect of chargeable profits**

- 38.**—(1) Schedule 26 is amended as follows.
- (2) In paragraph 1(3) (trading losses and group relief: meaning of “relevant allowance”)(**43**) after paragraph (c) (expenses of management) insert—
  - “(cc) any expenses deduction under section 76(1);”.

### **Change in ownership of investment company: deductions**

- 39.**—(1) Schedule 28A(**44**) is amended as follows.
- (2) In Part 2 (amounts in issue for the purpose of section 768B) in paragraph 6(a)(**45**) for—  
“the amount of any sums (including commissions) actually disbursed as expenses of management for the accounting period”  
substitute “the amount of any expenses of management referable to the accounting period (within the meaning of section 75)”.
- (3) In paragraph 6(c) for “section 75(3)” substitute “section 75(9)”.
- (4) In paragraph 6(d) for “section 75(4)” substitute “section 75(7)”.
- (5) In Part 3 (apportionment for purposes of section 768B) for paragraph 7(1)(a), substitute—
  - “(a) in the case of the sums mentioned in paragraph 6(a) above, by apportioning to each accounting period the amounts that would fall to be brought into account in that period as such sums, if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;
  - (aa) in the case of the charges mentioned in paragraph 6(b) above, by reference to the time when the charge is due to be paid;”.
- (6) In paragraph 7(1)(e) (apportionment in case of debits falling to be brought into account on the assumption that interest does not accrue until paid etc)(**46**) for sub-paragraphs (iii) and (iv) substitute—  
  
“and  
(iii) so falls to be brought into account—

(43) There are amendments to paragraph 1 which are not relevant for present purposes.

(44) Schedule 28A was inserted by paragraph 5 of Schedule 6 to the Finance Act 1995 (c. 4).

(45) There are amendments to paragraph 6 which are not relevant for present purposes.

(46) Paragraph 7(1)(e)(iv) was inserted by paragraph 58(4) of Part 2 of Schedule 25 to the Finance Act 2002 (c. 23).

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- on the assumption mentioned in paragraph (d)(iii) above, or
  - with such an adjustment as is mentioned in paragraph (d)(iv) above.”.
- (7) In Part 4 (disallowed debits)(**47**) in paragraph 11(1) (debts that fall within paragraph 11)(**48**) for paragraphs (b) and (bb) substitute—
- “(b) so falls to be brought into account—
    - (i) with an adjustment under paragraph 17 or 18 of Schedule 9 to that Act (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed); or
    - (ii) on the assumption, specified in sub-paragraph (2) of paragraph 2 of that Schedule, that the interest to which it relates does not accrue until it is paid; and”.
- (8) In Part 5 (amounts in issue for the purposes of section 768C) in paragraph 13(1)(**49**)—
- (a) in paragraph (b) for—
    - “the amount of any sums (including commissions) actually disbursed as expenses of management for the accounting period”substitute—
    - “the amount of any expenses of management referable to the accounting period (within the meaning of section 75)”;and
  - (b) in paragraph (d) for “section 75(3)” substitute “section 75(9)”;
  - (c) in paragraph (e) for “section 75(4)” substitute “section 75(7)”.
- (9) In Part 6 (apportionment for purposes of section 768C) for paragraph 16(1)(a), substitute—
- “(a) in the case of the sums mentioned in paragraph 13(1)(b) above, by apportioning to each accounting period the amounts that would fall to be brought into account in that period as such sums, if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;
  - (aa) in the case of the charges mentioned in paragraph 13(1)(c) above, by reference to the time when the charge is due to be paid;”.
- (10) In paragraph 16(1)(e) (manner of apportionment in case of debits falling to be brought into account on the assumption that interest does not accrue until paid)(**50**) for sub-paragraphs (iii) and (iv) substitute—
- “and
- (iii) so falls to be brought into account—
    - on the assumption mentioned in paragraph (d)(iii) above, or
    - with such an adjustment as is mentioned in paragraph (d)(iv) above.”.
- (11) The heading to the Schedule accordingly becomes “Change in ownership of company with investment business: deductions”.

(47) Part 4 was substituted by paragraph 54(4) of Schedule 14 to the Finance Act 1996 (c. 8).

(48) The relevant amendment to paragraph 11 is that made by paragraph 58 of Part 2 of Schedule 25 to the Finance Act 2002.

(49) There are amendments to paragraph 13 which are not relevant for present purposes.

(50) Paragraph 16(1)(e) was inserted by paragraph 54(7) of Schedule 14 to the Finance Act 1996 and amended by paragraph 58(9) of Part 2 of Schedule 25 and Part 3(12) of Schedule 40 to the Finance Act 2002.



### **Provision not at arm's length**

**40.**—(1) Schedule 28AA(**51**) is amended as follows.

(2) In paragraph (a) of the definition of “losses” in paragraph 14(1), for “section 75(3)” substitute “section 75(9)”.

### *Finance Act 1988*

### **Consideration for certain restrictive undertakings**

**41.**—(1) Section 73 of the Finance Act 1988(**52**) is amended as follows.

(2) For subsection (3) (payments treated as expenses of management) substitute—

“(3) Any payment which is treated as earnings of an employee by virtue of section 225 of the Income Tax (Earning and Pensions) Act 2003—

- (a) if paid or treated as paid by company with investment business, shall be treated for the purposes of section 75 of the Taxes Act 1988 as an expense of management to the extent that it otherwise would not be;
- (b) if paid or treated as paid by a company in relation to which section 76 of that Act applies, shall be treated as expenses payable falling to be brought into account at Step 1 in subsection (7) of that section to the extent that it otherwise would not be.”.

### *Finance Act 1989*

### **Investment and insurance companies: computation**

**42.**—(1) Section 44 of the Finance Act 1989(**53**) is amended as follows.

(2) For subsection (1) (no deduction for late paid remuneration) substitute—

“(1) For the purposes of corporation tax, in calculating for a period of account the profits of a company with investment business, an amount charged in the accounts in respect of employees' remuneration shall not be deductible under section 75 of the Taxes Act 1988 as expenses of management unless the remuneration is paid before the end of the period of 9 months immediately following the end of the period of account.”.

(3) In subsection (5) (profits of trade calculated before end of the period of 9 months) for “the profits of the trade” substitute “the profits of the company”.

(4) For subsection (7) (application to the company carrying on life assurance business) substitute—

“(7) This section shall apply in calculating the profits of a company in relation to which section 76 of the Taxes Act 1988 applies (companies carrying on life assurance business) as it applies in calculating the profits of a company with investment business; and in any such case—

- (a) any reference in this section to an amount being deductible under section 75 of the Taxes Act 1988 as expenses of management shall be taken as a reference to

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(51) Schedule 28AA was inserted by Schedule 16 of the Finance Act 1998 (c. 36); there are amendments which are not relevant for present purposes.

(52) 1988 c. 39: there are amendments which are not relevant for present purposes.

(53) 1989 c. 26. Section 44 was substituted by paragraph 158 of Part 2 of Schedule 6 to ITEPA. There are subsequent amendments which are not relevant for present purposes.

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an amount being brought into account under section 76 of that Act as expenses payable and references to a deduction shall be construed accordingly;

- (b) subsection (4) above shall have effect subject to section 86 below, and
- (c) in construing section 86 below the remuneration shall be treated as expenses payable for that period which fall to be included at Step 1 in section 76(7) of the Taxes Act 1988.”.

(5) In subsection (8) (definitions)—

(a) before the definition of “employee” insert—

““company with investment business” has the same meaning as in Part 4 of the Taxes Act 1988 (see section 130 of that Act),”; and

(b) omit the definition of “investment company”.

(6) The side note to the section accordingly becomes “Companies with investment business and insurance companies: computation”.

### **Non-approved retirement benefit schemes**

**43.**—(1) Section 76 of the Finance Act 1989<sup>(54)</sup> is amended as follows.

(2) In subsection (1) (no deduction in respect of expenses falling within subsection (1) or (2)) for the words from “and no expenses” to the end of the subsection substitute—

“and no expenses falling within either of those subsections shall be treated—

- (a) for the purposes of section 75 of the Taxes Act 1988 (companies with investment business) as expenses of management, or
- (b) for the purposes of section 76 of that Act (companies carrying on life assurance business) as expenses payable.”.

(3) In subsection (4) (no deduction unless sum actually expended) for paragraph (b) substitute—

“(b) under section 75 or 76 of the Taxes Act 1988,”.

(4) After subsection (4) insert—

“(4A) The reference in subsection (4) above to a sum being deducted shall be construed, so far as relating to section 76 of the Taxes Act 1988, as a reference to an amount being brought into account under that section as expenses payable.”.

### **Management expenses**

**44.**—(1) Section 87 of the Finance Act 1989<sup>(55)</sup> is amended as follows.

(2) Subsections (6) and (7) (carry forward and use of pre-1990 expenses under section 75(3) of the Taxes Act 1988) are repealed.

### **Corporation tax: policy holders' fraction of profits**

**45.**—(1) Section 88 of the Finance Act 1989<sup>(56)</sup> is amended as follows.

<sup>(54)</sup> There are amendments which are not relevant for present purposes. This section is prospectively repealed by the relevant entry in Part 3 of Schedule 42 to the Finance Act 2004.

<sup>(55)</sup> Section 87(6) was partly repealed by paragraph 8(2) of Schedule 33 and Part 3(12) of Schedule 14 to the Finance Act 2003.

<sup>(56)</sup> Section 88(3) was substituted by paragraph 57(1) of Schedule 8 to the Finance Act 1995 and amended by paragraph 56 of Schedule 14 to the Finance Act 1996 (c. 26).

(2) In subsection (3) (relevant profits to be income and gains of life assurance business reduced by aggregate amount of the items in the paragraphs) for the words from the end of paragraph (aa)(57) to the end substitute—

“and

(a) the basic deduction given by Step 8 in section 76(5) of the Taxes Act 1988.”.

### **Policy holder’s share of profits**

**46.**—(1) Section 89 of the Finance Act 1989(58) is amended as follows.

(2) In subsection (1B) (BLAGAB profits to be income and chargeable gains referable to company’s basic life assurance and general annuity business reduced by aggregate amount of the items in the paragraphs) for the words from paragraph (a) to the end of the subsection substitute—

“(a) amounts falling in respect of any non-trading deficits on the company’s loan relationships to be brought into account in that period in accordance with paragraph 4 of Schedule 11 to the Finance Act 1996, and

(b) the basic deduction given by Step 8 in section 76(7) of the Taxes Act 1988.”.

(3) In subsection (7), in the definition of “Case I profits” (which refers to adjustment in respect of losses in accordance with section 76(2C) and (2D) of the Taxes Act 1988) for “section 76(2C) and (2D)” substitute “the second sentence of section 76(10)”.

### *Finance Act 1991*

### **Basic life assurance and general annuity business: transitional relief for old annuity contracts**

**47.**—(1) In Schedule 7 to the Finance Act 1991(59) (basic life assurance and general annuity business) paragraph 16 (transitional relief for old annuity contracts) is amended as follows.

(2) In sub-paragraph (1) (which provides for an amount to be treated as a sum disbursed as expenses of management for the period) for “a sum disbursed as expenses of management of the company for that period”, substitute “expenses payable which fall to be brought into account for that period at Step 3 in section 76(7) of the Taxes Act 1988.”.

### *Taxation of Chargeable Gains Act 1992*

### **Allowable deductions: consideration chargeable to tax on income**

**48.**—(1) Section 37 of the Taxation of Chargeable Gains Act 1992(60) is amended as follows.

(2) Subsection (4) (reference in subsection (1) to computing income etc not to include reference to computation for purposes of section 76(2) of the Taxes Act 1988) is repealed.

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(57) Paragraph (aa) was inserted before paragraph (a) in subsection (3) by paragraph 56 of Schedule 14 to the Finance Act 1996.

(58) Subsection (1B) was inserted by paragraph 6 of Schedule 33 to the Finance Act 2003, and subsection (7) was inserted by article 58 of S.I. 2001/3629 and amended by paragraph 7 of Schedule 33 to the Finance Act 2003.

(59) 1991 c. 31. Paragraph 16(1) has been amended by section 67 of the Finance Act 1997 and further amended by paragraph 6(10) of Schedule 33 to the Finance Act 2003; there are other amendments which are not relevant for present purposes.

(60) 1992 c. 12. There are amendments to section 37 which are not relevant for present purposes.

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### *Finance Act 1996*

#### **Interest, and exchange gains and losses, on debts etc not arising from the lending of money**

- 49.** In section 100(9) of the Finance Act 1996<sup>(61)</sup> at the end of paragraph (c) add—  
“or expenses payable falling to be brought into account in Step 1 of section 76(7) of that Act”.

#### **Loan relationships: claims etc relating to deficits**

- 50.**—(1) Schedule 8 to the Finance Act 1996<sup>(62)</sup> is amended as follows.

(2) In paragraph 3 (claim to carry back deficit to previous accounting periods) in sub-paragraph (6) (reliefs which fall to be given in priority) in paragraph (c) (case where company is an investment company) for “an investment company” substitute “a company with investment business”.

### *Finance Act 1999*

#### **Receipts by way of reverse premium: insurance companies carrying on life assurance business**

**51.**—(1) In Schedule 6 to the Finance Act 1999<sup>(63)</sup> (tax treatment of receipts by way of reverse premium) paragraph 4 (special rules for insurance companies carrying on life assurance business) is amended as follows.

- (2) For sub-paragraph (3) (deduction from expenses of management) substitute—

“(3) Sub-paragraph (3A) applies where a reverse premium is brought into account by an insurance company carrying on life assurance business in respect of which it is chargeable to tax otherwise than in accordance with the rules applicable to Case I of Schedule D.

(3A) Where this sub-paragraph applies so much of the reverse premium as is referable to the company’s basic life assurance and general annuity business shall be treated for the purposes of section 85 of the Finance Act 1989 (charge of certain receipts of basic life assurance and general annuity business to tax under Case VI of Schedule D) as receipts falling within subsection (1) of that section for the accounting period in which the reverse premium is brought into account.”

- (3) In sub-paragraph (4) for “life assurance business” substitute “brought into account”.

### *Capital Allowances Act 2001*

#### **Qualifying activities**

- 52.**—(1) Section 15 of the Capital Allowance Act 2001<sup>(64)</sup> is amended as follows.

(2) In subsection (1) (which specifies activities which are qualifying activities for the purposes of Part 1 of that Act) for paragraph (g) (management of investment company) substitute—

“(g) managing the investments of a company with investment business.”.

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<sup>(61)</sup> 1996 c. 8.

<sup>(62)</sup> Paragraph 3(6) has been amended by paragraph 96 of Schedule 2, to the Capital Allowances Act 2001 and paragraph 18 of Part 1 of Schedule 25 to the Finance Act 2002.

<sup>(63)</sup> 1999 c. 16. There are amendments to the Schedule which are not relevant for present purposes.

<sup>(64)</sup> 2001 c. 2.

## **Related definitions**

**53.** For section 18 of the Capital Allowances Act 2001 substitute—

### **“Managing the investments of a company with investment business**

**18.—(1)** For the purposes of this Part, managing the investments of a company with investment business consists of pursuing those purposes expenditure on which would be treated as expenses of management within section 75 of ICTA.

**(2)** In this Part “company with investment business” has the meaning given by section 130 of ICTA.”.

## **Giving of allowances: managing investments of company with investment business**

**54.—(1)** Section 253 of the Capital Allowances Act 2001 (investment companies) is amended as follows.

**(2)** In subsection (1) (section applies if qualifying activity is management of an investment company) for “the management of an investment company” substitute “managing the investment business”.

**(3)** The side note to the section, and the italic heading preceding it, accordingly each become “Companies with investment business”.

## **Life assurance business: different giving effect rules for different categories of business**

**55.—(1)** Section 256 of the Capital Allowance Act 2001 is amended as follows.

**(2)** In subsection (2)(a) (allowances in respect of basic life assurance and general annuity business to be treated as additional expenses of management within section 76 of the Taxes Act 1988) for “additional expenses of management within section 76” substitute “expenses payable which fall to brought into account at Step 3 in section 76(7)”.

## **Provisions supplementary to sections 255 and 256**

**56.—(1)** Section 257 of Capital Allowances Act 2001 is amended as follows.

**(2)** In subsection (2), for paragraph (b) (subsection (1) not to prevent allowance being taken into account in calculation for purposes of section 76(2) of Taxes Act 1988) substitute—

“(b) finding, in accordance with subsection (10) of section 76 of ICTA, the amount D1 in Step 9 in subsection (7) of that section (calculation for purposes of complying with restriction on amount of expenses deduction).”.

## **Management assets**

**57.—(1)** Section 544 of the Capital Allowances Act 2001 is amended as follows.

**(2)** For subsections (3) and (4) (which define management of life assurance business) substitute—

“(3) The management of any life assurance business consists of pursuing those purposes expenditure on which falls to be regarded as expenses payable for the purposes of section 76 of ICTA.”.

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### *Finance Act 2001*

#### **Remediation of contaminated land: entitlement to land remediation tax credit**

**58.**—(1) In Schedule 22 to the Finance Act 2001(65) paragraph 14 is amended as follows.

(2) In sub-paragraph (6) (loss treated under section 432AB(3) of the Taxes Act 1988 as expenses of management under section 76) for “as an amount of expenses of management under section 76 of that Act” substitute “for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section”.

(3) In sub-paragraph (7) (no amount carried forward to succeeding accounting period under section 75(3) of the Taxes Act 1988)—

- (a) for “section 75(3)” substitute “section 76(12) or (13)”; and
- (b) for “expenses of management” substitute “unrelieved expenses”.

(4) In sub-paragraph (8) (Schedule A loss where amount to be carried forward under section 75(3) of the Taxes Act 1988)—

- (a) for “section 75(3)” substitute “section 76(12) or (13)”; and
- (b) in paragraph (b) for “the amount” substitute “the total amount”.

(5) For sub-paragraph (9) (disregard of amounts brought forward from either periods under section 75(3) of the Taxes Act 1988 etc) substitute—

“(9) In determining for the purposes of sub-paragraph (7) and (8) above whether there is an amount which falls to be carried forward under subsection (12) or (13) of section 76 of Taxes Act 1988, there shall be disregarded any amounts brought forward from an earlier accounting period and treated for the purposes of that section as expenses payable which fall to be brought into account for that period in question—

- (a) in accordance with Step 6 in subsection (7) of that section, by virtue of a previous application of subsection (12) or (13) of that section, or
- (b) in accordance with Step 3 in subsection (7) of that section, by virtue of paragraph 4(4) of Schedule 11 to the Finance Act 1996 (loan relationships deficit carried forward and so brought into account).”.

#### **Land remediation tax credit: restriction of losses carried forward**

**59.**—(1) In Schedule 22 to the Finance Act 2001 paragraph 17 is amended as follows.

(2) In sub-paragraph (3) (case where sub-paragraph (4) applies)—

- (a) in paragraph (a) (loss treated under section 432AB(3) of the Taxes Act 1988 as expenses of management under section 76) for—

“as an amount of expenses of management under section 76 of that Act”  
substitute—

“for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section”; and

- (b) in paragraph (b) (amount falls to be carried forward to succeeding accounting period under section 75(3) of the Taxes Act 1988)—

- (i) for “section 75(3)” substitute “section 76(12) or (13)”; and
- (ii) for “expenses of management” substitute “unrelieved expenses”.

(3) In sub-paragraph (4) (amount carried forward under section 75(3) of Taxes Act 1988 to be reduced by loss surrendered)—

- (a) for “the amount which” substitute “the total amount which”; and
- (b) for “section 75(3)” substitute “section 76(12) or (13)”.

**Land remediation tax credit: entitlement to relief: “I minus E” basis**

**60.**—(1) In Schedule 22 to the Finance Act 2001 paragraph 22 is amended as follows.

(2) In sub-paragraph (3) (amount of company’s qualifying expenditure) for—  
“reduced by the amount (if any) which by virtue of section 76(1)(d) of the Taxes Act 1988 is not to be treated as expenses of management”  
substitute—

“reduced by the amount (if any) which by virtue of paragraph (a) of Step 1 in section 76(7) of the Taxes Act 1988 is not to be brought into account at that Step as expenses payable for that period”.

**Land remediation tax credit: giving effect to relief: enhanced expenses of management**

**61.**—(1) In Schedule 22 to the Finance Act 2001 paragraph 23 is amended as follows.

(2) In sub-paragraph (1) (which contains a description of section 76 of the Taxes Act 1988) for “deduction of expenses of management etc” substitute “deduction in respect of expenses payable”.

(3) In sub-paragraph (2) (claim to treat 150% of qualifying expenditure as part of company’s expenses of management) for “as part of its expenses of management for that period” substitute—  
“as expenses payable which fall to be brought into account for that period at Step 1 in section 76(7) of the Taxes Act 1988”.

(4) The heading to the paragraph accordingly becomes “Giving effect to relief: enhanced expenses payable”.

**Land remediation tax credit: entitlement to life assurance company tax credit**

**62.**—(1) In Schedule 22 to the Finance Act 2001 paragraph 24 is amended as follows.

(2) In sub-paragraph (2) (qualifying loss) in paragraph (b) (amount falls to be carried forward to succeeding accounting period under section 75(3) of the Taxes Act 1988)—

- (a) for “section 75(3)” substitute “section 76(12) or (13)”; and
- (b) for “expenses of management” substitute “unrelieved expenses”.

(3) For sub-paragraph (3) (disregard of amounts brought forward from earlier periods under section 75(3) of the Taxes Act 1988 etc) substitute—

“(3) In determining for the purposes of sub-paragraph (2)(b) whether there is an amount which falls to be carried forward under subsection (12) or (13) of section 76 of the Taxes Act 1988, there shall be disregarded any amounts brought forward from an earlier accounting period and treated for the purposes of that section as expenses payable which fall to be brought into account for the period in question—

- (a) in accordance with Step 7 in subsection (7) of that section, by virtue of a previous application of subsection (12) or (13) of that section, or
- (b) in accordance with Step 3 in subsection (7) of that section, by virtue of paragraph 4(4) of Schedule 11 to the Finance Act 1996 (loan relationships deficit carried forward and so brought into account).”.

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**Land remediation tax credit: restriction on carrying forward expenses of management as follows**

**63.**—(1) In Schedule 22 to the Finance Act 2001 paragraph 27 is amended as follows.

(2) For sub-paragraph (1) (amount to be carried forward under section 75(3) of Taxes Act 1988 to be reduced by expenses of management surrendered) substitute—

“(1) For the purposes of section 76 of the Taxes Act 1988, the total amount which may—

- (a) be carried forward under subsection (12) or (13) of that section from an accounting period in which the company claims a life assurance company tax credit, and
- (b) be brought into account for the next accounting period in accordance with Step 7 in subsection (7) of that section,

is treated as reduced by the amount of the expenses payable surrendered.”.

(3) In sub-paragraph (2) (amount of expenses of management surrendered) for “expenses of management” substitute “expenses payable”.

(4) The heading to the paragraph accordingly becomes “Restriction on carrying forward expenses payable”.

*Finance Act 2002*

**Tax relief for research and development: entitlement to relief in respect of “I minus E” basis**

**64.**—(1) In Schedule 12 to the Finance Act 2002(66) paragraph 13 is amended as follows.

(2) For sub-paragraph (2) (application of Part 3 to treat amounts as disbursed as expenses of management) substitute—

“(2) The provisions of Part 3 which allow a deduction in calculating the profits of a trade apply in relation to the company to treat amounts as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.”.

**Expenditure on vaccine research etc: entitlement to relief in respect of “I minus E” basis**

**65.**—(1) In Schedule 13 to the Finance Act 2002 paragraph 23 is amended as follows.

(2) For sub-paragraph (2) (application of Part 3 to treat amounts as disbursed as expenses of management) substitute—

“(2) The provisions of Part 3 which allow a deduction in calculating the profits of a trade apply in relation to the company to treat amounts as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.”.

**Loan relationships**

**66.**—(1) In Schedule 25 to the Finance Act 2002 paragraph 58 is amended as follows.

(2) Sub-paragraph (6)(a) (consequential amendment of enactments: paragraph 11 of Schedule 28A to the Taxes Act 1988) and the word “and” following that paragraph are repealed.

(3) Sub-paragraph (9) (consequential amendment of enactments: paragraph 16(1)(e) of Schedule 28A to the Taxes Act) is repealed.

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(66) 2002 c. 23.



### **Intangible fixed assets: special provisions relating to insurance companies**

67.—(1) In Schedule 29 to the Finance Act 2002 paragraph 36 is amended as follows.

(2) In sub-paragraph (3) (insurance company carrying on basic life assurance and general annuity business) for paragraph (c) (non-trading loss treated as additional expenses of management) substitute—

“(c) any resulting non-trading loss in respect of intangible assets is treated as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.”.

### *ITEPA*

### **Business entertainment and gifts: exception where employer’s expenses disallowed**

68.—(1) Section 357 of ITEPA(67) is amended as follows.

(2) For subsection (3) (amount disallowed in calculating employer’s expenses of management) substitute—

“(3) Condition B is that the inclusion of the amount falls to be disallowed (or would be disallowed apart from some other relief applying to the employer) under that section in calculating—

- (a) the employer’s expenses of management for the purposes of giving relief under the Tax Acts, or
- (b) the employer’s expenses deduction under section 76 of ICTA (companies carrying on life assurance business).”.

### *Finance Act 2003*

### **Corporation tax relief for employee share acquisition: shares: method of giving relief**

69.—(1) In Schedule 23 to the Finance Act 2003(68), paragraph 9 is amended as follows.

(2) For sub-paragraph (2) (investment company) substitute—

“(2) If the company carrying on that business is a company with investment business, the amount of the relief is treated as expenses of management for the purposes of section 75 of the Taxes Act 1988.”.

(3) For sub-paragraph (3) (insurance company carrying on life assurance business) substitute—

“(3) If the company carrying on that business is an insurance company carrying on life assurance business, the amount of the relief shall be treated as expenses payable falling to be brought into account at Step 1 in section 76(7) of the Taxes Act 1988.”.

### **Corporation tax relief for employee share acquisition: options: method of giving relief**

70.—(1) In Schedule 23 to the Finance Act 2003, paragraph 16 is amended as follows.

(2) For sub-paragraph (2) (investment company) substitute—

“(2) If the company carrying on that business is a company with investment business the amount of the relief is treated as expenses of management for the purposes of section 75 of the Taxes Act 1988.”.

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(67) 2003 c. 1.  
(68) 2003 c. 12.

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- (3) For sub-paragraph (3) (insurance company carrying on life assurance business) substitute—
- “(3) If the company carrying on that business is an insurance company carrying on life assurance business, the amount of the relief shall be treated as expenses payable to be brought into account at Step 1 in section 76(7) of the Taxes Act 1988.”.

#### **Restriction of deductions for employee benefit contributions: life assurance business**

- 71.—(1) Schedule 24 to the Finance Act 2003 is amended as follows.
- (2) For paragraph 7 (life assurance business) substitute—

##### **“Life assurance business**

7.—(1) In the case of a company in relation to which section 76 of the Taxes Act 1988 applies (expenses of companies carrying on life assurance business) the effect of section 86 of the Finance Act 1989 (spreading of relief for acquisition expenses) shall be ignored in determining for the purposes of paragraph 1(1) whether a deduction would (apart from this Schedule) be made.

(2) But paragraph 1(4) above has effect subject to section 86 of the Finance Act 1989 where, in accordance with sub-paragraph (1) above, an amount is allowed as a deduction for a particular period under paragraph 1(4).

(3) In construing that section, the employee benefit contributions shall be treated as expenses payable for that period which fall to be included at Step 1 in section 76(7) of the Taxes Act 1988.

(4) In the application of this Schedule to a company in relation to which section 76 of the Taxes Act 1988 applies—

- (a) any reference to a deduction in respect of employee benefit contributions shall be taken as a reference to an amount being brought into account under that section as expenses payable, and
- (b) references to deduction shall be construed accordingly.”.

#### *The Energy Act 2004*

#### **Extinguishment of BNFL losses for tax purposes**

- 72.—(1) The Energy Act 2004(69) is amended as follows.
- (2) In section 44(2)(c), for “section 75(3)” substitute “section 75(9)”.

#### *Amendments to secondary legislation*

#### **The Income Tax (Manufactured Overseas Dividends) Regulations 1993**

- 73.—(1) The Income Tax (Manufactured Overseas Dividends) Regulations 1993(70) are amended as follows.
- (2) Regulation 4(1)(c) is revoked.
- (3) In regulation 5(1A) after “person” insert “who is not within the charge to corporation tax and”.

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(69) 2004 c. 20.

(70) S.I. 1993/2004. There are amendments to regulation 4 which are not relevant for present purposes. Regulation 5 was amended by regulation 6 of S.I. 2003/2582.

### **The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995**

74.—(1) The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995(71) are amended as follows.

(2) In regulation 3(1)(72), in paragraph (b) of the definition of C for the words from “deducted” to the end of the definition, substitute “charged to tax under section 85 of the Finance Act 1989”.

(3) In regulation 6(3)(e)(ii)(73) for “deducted” to the end of the sub-paragraph, substitute “charged to tax under section 85 of the Finance Act 1989.”.

### **Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997**

75. After regulation 5 of the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997(74) insert—

#### **“Modifications of section 76 of the Taxes Act**

5A.—(1) Paragraphs (2) to (6) prescribe modifications to section 76 of the Taxes Act so far as it applies to the life or endowment business carried on by friendly societies.

(2) In subsection (2), after “referable to” insert “taxable”;

(3) In subsection (3), for “line 12, 22 or 25 of Form 40 (the revenue account)” substitute “line 12 or 25 of Form 40 (the revenue account) or column 1 of line 49 of Form 41 (long-term insurance business: analysis of premiums and expenses)”;

(4) In paragraph (a) of Step 1 in subsection (7), after “attributable to” insert “taxable”;

(5) In subsection (8)—

(a) after “attributable to” insert “taxable”;

(b) in paragraph (b), for “the Prudential Sourcebook (Insurers)” substitute “the Prudential Sourcebook (Friendly Societies)”;

(6) In subsection (11), for “basic life assurance” substitute “taxable basic life assurance” wherever the words occur.

(7) The modifications in paragraphs (3) and (5)(b) only apply to a friendly society to which Chapter 5 of the Prudential Sourcebook (Friendly Societies) applies.”.

### **The Open-ended Investment Companies (Tax) Regulations 1997**

76.—(1) The Open-ended Investment Companies Regulations 1997(75) are amended as follows.

(2) Regulation 10(3) is revoked.

(3) In regulation 25(4), for sub-paragraph (a) substitute—

“(a) section 75(9) (management expenses carried forward),”.

### **The European Single Currency (Taxes) Regulations 1998**

77.—(1) The European Single Currency (Taxes) Regulations 1998(76) are amended as follows.

(2) In regulation 6—

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(71) S.I. 1995/1730.

(72) Regulation 3 was amended by S.I. 1996/1621.

(73) There are amendments to regulation 6 which are not relevant for present purposes.

(74) S.I. 1997/473.

(75) S.I. 1997/1154. There are amendments which are not relevant for present purposes.

(76) S.I. 1998/3177.

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- (a) in paragraph (1), for the words from “shall be treated” to the end substitute “shall be treated in accordance with paragraph (1A)”;
- (b) after paragraph (1) insert—
  - “(1A) If the company—
    - (a) is a company with investment business, the costs shall be treated as expenses of management deductible under section 75 to the extent they otherwise would not be, or
    - (b) is one in relation to which section 76 applies, the costs shall be treated for the purposes of that section as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section to the extent that they otherwise would not be.”.
- (c) paragraphs (2) and (3) are revoked; and
- (d) in paragraph (4), for “has the meaning” substitute—
  - “and “company with investment business” have the meanings”.

**The Insurance Companies (Capital Redemption Business)(Modification of the Corporation Tax Acts) Regulations 1999**

**78.** Regulation 4 of the Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999(77) is revoked.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes consequential adjustments to the Corporation Tax Acts required by the amendments to sections 75 and 76 of the Income and Corporation Taxes Act 1988 (c. 1) which are made by section 38 to 40 and 45 of, and Schedule 6 to, the Finance Act 2004 (c. 12). In what follows “ICTA” means the 1988 Act and the former sections 75 and 76 are referred to below as “old sections 75 and 76” while their successors are referred to as “new sections 75 and 76”.

Article 1 provides for the citation, commencement and effect of the Order and the interpretation of some terms used in it.

Article 2 provides that the Schedule to the Order shall have effect.

The Schedule to the Order contains the amendments. These have been grouped in this note by theme rather than statutory order.

The amendments fall into a series of discrete groups:

The first group of amendments reflects the fact that relief for management expenses is now available to a company with investment business, not just an investment company. The amendments to which this relates are those to—

- (a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies)

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(77) S.I. 1999/498.

- (b) section 93 of ICTA (other grants under Industrial Development Act 1982 etc)
- (c) section 392A of ICTA (Schedule A losses)
- (d) section 403ZD of ICTA (group relief: meaning of “management expenses” in section 403)
- (e) section 468 of ICTA (authorised unit trusts)
- (f) section 487 of ICTA (credit unions)
- (g) section 578A of ICTA (expenditure on car hire)
- (h) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions)
- (i) section 44 of the Finance Act 1989 (investment and insurance companies: computation)
- (j) Schedule 8 to the Finance Act 1996 (loan relationships: claims etc relating to deficits)
- (k) section 15 of the Capital Allowances Act 2001 (qualifying activities) and section 18 of that Act (related definitions);
- (l) section 253 of the Capital Allowances Act 2001 (method of giving allowances: companies with investment business);
- (m) paragraph 9 of Schedule 23 to the Finance Act 2003 (corporation tax relief for employee share acquisition: shares: method of giving relief); and
- (n) paragraph 16 of Schedule 23 to that Act (corporation tax relief for employee share acquisition: options: method of giving relief).

The second group of amendments reflect the fact that section 76 has been decoupled from section 75 and uses a different phraseology (“expenses payable brought into account in Step 1 of section 76(7)”). The amendments in this group are to—

- (a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies);
- (b) section 84A of ICTA (costs of establishing share option or profit sharing schemes: relief);
- (c) section 85 of ICTA (payments to trustees of approved profit sharing schemes);
- (d) section 85A of ICTA (costs of establishing employee share ownership trusts);
- (e) section 86 of ICTA (employees seconded to charities and educational establishments);
- (f) section 90 of ICTA (additional payments to redundant employees);
- (g) section 403ZD of ICTA (group relief: meaning of “management expenses” in section 403);
- (h) section 403ZE of ICTA (computation of gross profits);
- (i) section 577 of ICTA (business entertaining expenses);
- (j) section 577A of ICTA (expenditure involving crime);
- (k) section 578A of ICTA (expenditure on car hire);
- (l) section 579 of ICTA (statutory redundancy payments);
- (m) section 588 of ICTA (training courses for employees);
- (n) section 589A of ICTA (counselling services for employees);
- (o) section 592(4) to (6) of ICTA (exempt approved schemes);
- (p) section 617 of ICTA (social security benefits and contributions);
- (q) section 797 of ICTA (limits on credit for foreign tax; corporation tax);
- (r) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions);
- (s) Schedule 26 to ICTA (controlled foreign companies: reliefs against liability for tax in respect of chargeable profits);
- (t) section 73 of the Finance Act 1988 (consideration for certain restrictive undertakings);

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- (u) section 76 of the Finance Act 1989 (non-approved retirement benefit schemes);
- (v) Schedule 22 to the Finance Act 2001 (land remediation tax credit: entitlement to relief: “I minus E” basis); and
- (w) section 357 of the Income Tax Earnings and Pensions Act 2003 (business entertainment and gifts: exception where employer’s expenses disallowed).

The third group amends references to “disbursed”, which are replaced by “deductible” or other phrases appropriate to the terminology of the new section 75 in the following provisions—

- (a) section 392A of ICTA (Schedule A losses);
- (b) section 400 of ICTA (write-off of government investment);
- (c) section 403ZD of ICTA (group relief: meaning of “management expenses” in section 403);
- (d) section 404 of ICTA (limitation of group relief in relation to certain dual resident companies);
- (e) section 468 of ICTA (authorised unit trusts);
- (f) section 468L of ICTA (interest distributions);
- (g) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions); and
- (h) Schedule 28A to ICTA (change in ownership of investment company: deductions).

The fourth group amends special timing rules that apply to section 75 to reflect the new language of section 75 in the following provisions—

- (a) sections 79, 79A and 79B of ICTA (relief for contributions to certain bodies);
- (b) section 84A of ICTA (costs of establishing share option or profit sharing schemes: relief);
- (c) section 85A of ICTA (costs of establishing employee share ownership trusts);
- (d) section 90 of ICTA (additional payments to redundant employees);
- (e) section 579 of ICTA (statutory redundancy payments);
- (f) section 588 of ICTA (training courses for employees);
- (g) Schedule 4AA to ICTA (share incentive plans: corporation tax deductions);
- (h) Schedule 28A to ICTA (change in ownership of investment company: deductions); and
- (i) section 44 of the Finance Act 1989 (investment and insurance companies: computation).

The fifth group amends references to a carry forward of management expenses under the old section 75(3) by substituting references to new section 75(9) in the following provisions—

- (a) section 400 of ICTA (write-off of government investment);
- (b) section 403ZD of ICTA (group relief: meaning of “management expenses” in section 403);
- (c) section 403ZE of ICTA (computation of gross profits); and
- (d) Schedule 28A to ICTA (change in ownership of investment company: deductions).

The sixth group amends references to amounts being treated as expenses of management under the old section 76 by replacing them with references to being expenses payable (including expenses brought into account in Step 1 or Step 3 in the new section 76) or an expenses deduction, in the following provisions—

- (a) section 432AB of ICTA (losses from Schedule A business or overseas property business);
- (b) section 437 of ICTA (general annuity business);
- (c) section 444A of ICTA (transfers of business);
- (d) section 587B of ICTA (gifts of shares, securities and real property to charities etc);

- (e) section 44(7) of the Finance Act 1989 (investment and insurance companies: computation);
- (f) Schedule 7 to the Finance Act 1991 (basic life assurance and general annuity business: transitional relief for old annuity contracts);
- (g) section 256 of the Capital Allowances Act 2001 (life assurance business: different giving effect rules for different categories of business);
- (h) paragraph 14 of Schedule 22 to the Finance Act 2001 (remediation of contaminated land: entitlement to land remediation tax credit);
- (i) paragraph 17 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: entitlement to relief: “I minus E” basis);
- (j) paragraph 23 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: giving effect to relief: enhanced expenses of management);
- (k) paragraph 27 of Schedule 22 to the Finance Act 2001 (land remediation tax credit: restriction on carrying forward expenses of management);
- (l) Schedule 12 to Finance Act 2002 (tax relief for research and development: entitlement to relief in respect of “I minus E” Basis);
- (m) Schedule 13 to the Finance Act 2002 (expenditure on vaccine research etc: entitlement to relief in respect of “I minus E” basis); and
- (n) Schedule 29 to the Finance Act 2002 (intangible fixed assets: special provisions relating to insurance companies).

The seventh group amends references to the old sections 75 and 76 to reflect the fact that the payments fall to be treated as expenses payable under new section 75 without needing to be so treated under new section 76 in the following places—

- (a) section 86A of ICTA (charitable donations: contributions to agent’s expenses); and
- (b) section 88 of ICTA (payment to Export Credits Guarantee Department).

The eighth group comprises amendments to the language of the carry forward under the old section 76(5) (minimum profits test) to reflect the new section 76(13) in paragraphs 14, 17, 53 and 54(2) of Schedule 22 to Finance Act 2001 (remediation of contaminated land: entitlement to land remediation tax credit).

Life assurance provisions not covered in previous paragraphs are amended as a result of changes to the minimum profits test (otherwise know as the notional Case I restriction) and other changes to section 76 made by section 40 Finance Act 2004. The provisions concerned—

- (a) repeal the transitional provisions in section 87 of the Finance Act 1989 for the pool of pre-1990 expenses, which are now redundant;
- (b) amend section 37 of the Taxation of Chargeable Gains Act 1992, repealing a reference to the old minimum profits test in section 76 which has been redundant since the enactment of section 65 Finance (No. 2) Act 1992;
- (c) amend other provisions to secure consistency of terminology with that used in the new sections 75 and 76 and
- (d) make other consequential repeals.

In addition paragraphs 72 to 78 make consequential amendments to subordinate legislation.

These Regulations do not impose new costs on business.