

SCHEDULE 23

Section 78

EXCHANGE GAINS AND LOSSES FROM LOAN RELATIONSHIPS ETC

PART 1

AMENDMENTS OF THE FINANCE ACT 1996

<i>Introductory</i>	5
1 Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) is amended in accordance with the following provisions of this Part.	
<i>Meaning of “related transaction”</i>	
2 (1) Section 84 (debits and credits brought into account) is amended as follows.	
(2) In subsection (5) (meaning of “related transaction” in the section) for “In this section” substitute “In this Chapter”.	10
(3) In subsection (6) (disposals and acquisitions for the purposes of the section) for “for the purposes of this section” substitute “for the purposes of subsection (5) above”.	
<i>Exchange gains and losses from loan relationships etc.</i>	
3 After section 84 (debits and credits brought into account) insert—	15
“84A Exchange gains and losses from loan relationships	
(1) The reference in section 84(1)(a) above to the profits, gains and losses arising to a company from its loan relationships and related transactions includes a reference to exchange gains and losses arising to the company from its loan relationships.	20
(2) Subsection (1) above is subject to the following provisions of this section.	
(3) Subsection (1) above does not have effect in relation to—	
(a) so much of an exchange gain or loss arising to a company in relation to an asset representing a loan relationship of the company as falls within subsection (4) below; or	25
(b) so much of an exchange gain or loss arising to a company in relation to a liability representing a loan relationship of the company as falls within subsection (5) below; or	30
(c) so much of any exchange gain or loss arising to a company as results from any translation from one currency to another pursuant to section 93A(4) of the Finance Act 1993 of the profit or loss of part of the company’s business; or	
(d) so much of an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company as falls within a description prescribed for the purpose in regulations made by the Treasury.	35

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- (4) For the purposes of subsection (3)(a) above, an exchange gain or loss falls within this subsection to the extent that, in accordance with generally accepted accounting practice, an amount representing the whole or part of it is carried to or sustained by a reserve maintained by the company. 5
- (5) For the purposes of subsection (3)(b) above, an exchange gain or loss falls within this subsection to the extent that, in accordance with generally accepted accounting practice, an amount representing the whole or part of it—
- (a) is carried to or sustained by a reserve maintained by the company; and 10
 - (b) is set off by or against an amount falling within subsection (6) below.
- (6) An amount falls within this subsection if—
- (a) it represents the whole or part of an exchange gain or loss arising to the company in relation to any asset of the company; and 15
 - (b) in accordance with generally accepted accounting practice it is carried to or sustained by the reserve mentioned in subsection (5)(a) above. 20
- (7) Where by virtue of subsection (3) above subsection (1) above does not have effect in relation to an amount representing the whole or part of an exchange gain or loss, section 84(2)(b) above shall not have effect in relation to that amount (but this subsection is subject to regulations under subsection (8) below). 25
- (8) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which subsection (1) above does not, by virtue of subsection (3) above, have effect.
- (9) The reference in subsection (8) above to bringing amounts into account is a reference to bringing amounts into account—
- (a) for the purposes of this Chapter, as credits or debits in respect of the loan relationships of the company concerned; or
 - (b) for the purposes of the Taxation of Chargeable Gains Act 1992. 35
- (10) Any power to make regulations under this section includes power to make different provision for different cases.”.

Authorised accounting methods

- 4 (1) Section 85 is amended as follows.
- (2) In subsection (2) (accounting methods authorised only if the conditions in the paragraphs of the subsection are satisfied) after paragraph (b) insert—
- “(bb) it contains proper provision for determining exchange gains and losses from loan relationships for accounting periods; and”.
- (3) In paragraph (c) of that subsection (accruals basis not to give debits by reference to valuation at different times of asset representing loan 45

relationship) after “(other than” insert “provision in respect of exchange losses or”.

Convertible securities etc: exchange gains and losses

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| 5 | (1) Section 92 (convertible securities etc: creditor relationships) is amended as follows. | 5 |
| | (2) In subsection (2) (which, in the case of securities to which the section applies, confines the amounts to be brought into account under the Chapter to interest) after “confined to” insert “(a)” and at the end of the subsection add “; and | |
| | (b) amounts relating to exchange gains or losses”. | 10 |
| | (3) After subsection (5) (consideration for purposes of Taxation of Chargeable Gains Act 1992 (c. 12) to be adjusted by excluding certain amounts relating to interest brought into account under subsections (2) and (3)) insert – | |
| | “(5A) For the purposes of that Act the amount or value of the consideration for any disposal of the asset – | 15 |
| | (a) shall be increased by the addition of any relevant exchange losses, determined in accordance with subsection (5C) below; and | |
| | (b) shall (after giving effect to any such increase) be reduced (but not below nil) by the deduction of any relevant exchange gains, determined in accordance with that subsection. | 20 |
| | (5B) In subsection (5C) below – | |
| | “relevant accounting period” means any accounting period beginning on or after 1st October 2002; and | |
| | “the relevant condition” is that the asset in question is an asset to which this section applies and is held by the company making the disposal. | 25 |
| | (5C) For the purposes of subsection (5A) above, relevant exchange gains or, as the case may be, losses in the case of any asset are – | |
| | (a) the amount of any exchange gains or, as the case may be, losses brought into account under subsections (2) and (3) above in respect of the asset, by the company making the disposal, for a relevant accounting period throughout which the relevant condition is satisfied; and | 30 |
| | (b) for any relevant accounting period not falling within paragraph (a) above in which the relevant condition is at some time satisfied, an amount which, on a just and reasonable apportionment, represents so much of the amount of any exchange gains or, as the case may be, losses brought into account under subsections (2) and (3) above in respect of the asset, by the company making the disposal, for that period as is referable to the part of the period for which the relevant condition is satisfied. | 35
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| | (5D) Where – | |
| | (a) the amount of the relevant exchange gains falling to be deducted under subsection (5A)(b) above, exceeds | 45 |

- (b) the amount required to reduce the amount or value of the consideration to nil,
the excess shall be treated for the purposes of section 38(1)(c) of the Taxation of Chargeable Gains Act 1992 as incidental costs of making the disposal of the asset.” 5
- (4) In subsection (6) –
- (a) in the opening words (construction of references to disposal in subsection (5)) for “subsection (5)” substitute “subsections (5) and (5A)”; and
- (b) in paragraph (b) (disposals within the meaning of the Taxation of Chargeable Gains Act 1992 but for section 127 or 116(10)) omit “127 or”. 10
- (5) In subsection (9) (which, subject to subsection (10), gives the meaning of “the relevant consideration”) for “subsection (10)” substitute “subsections (10) and (10A)”. 15
- (6) After subsection (10) (which disappplies subsection (5) in the case of a deemed disposal and re-acquisition under subsection (7) but makes corresponding provision) insert –
- “(10A) Subsection (5A) above shall not apply in the case of a deemed disposal and re-acquisition under subsection (7) above; but in any such case the amount of the relevant consideration, after any reduction under subsection (10) above, shall be treated for the purposes of the Taxation of Chargeable Gains Act 1992 as further adjusted by making the same additions and deductions (and for the purposes of both the disposal and the re-acquisition) as would fall to be made under subsection (5A) above if it were the consideration for an actual disposal and that subsection also applied in relation to the corresponding acquisition.”. 20
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Extension of s.100 to exchange gains and losses and to items other than money debts

- 6 For section 100 (interest on judgments, imputed interest, etc) substitute – 30

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

- (1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where –
- (a) the company stands, or has stood, in the position of a creditor or debtor as respects a money debt; 35
- (b) the money debt is not one which arose from a transaction for the lending of money (so that, in consequence of section 81(1)(b) above, there is no loan relationship); and
- (c) the money debt is one – 40
- (i) on which interest is payable to or by the company; or
- (ii) in relation to which exchange gains or losses arise to the company;
- and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly. 45

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- (2) Where a company has a relationship to which this section applies –
- (a) this Chapter shall have effect in relation to the interest payable under, or the exchange gains or losses arising to the company from, the relationship as it has effect in relation to interest payable under, or (as the case may be) exchange gains or losses arising to the company from, a loan relationship to which the company is a party; but 5
 - (b) the only credits or debits to be brought into account for the purposes of this Chapter in respect of the relationship are those relating to the interest or (as the case may be) to the exchange gains or losses; 10
- and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.
- (3) References in this section to interest payable on a money debt include a reference to any amount which, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), falls to be treated as – 15
- (a) interest on a money debt; or
 - (b) interest on an amount which is treated as a money debt; 20
- and references in the other provisions of this section to a money debt accordingly include a reference to the amount on which that amount so falls to be treated as interest.
- (4) Except as provided by subsection (7) below, any question whether debits or credits falling to be brought into account by virtue of this section in relation to a company – 25
- (a) are to be brought into account under section 82(2) above, or
 - (b) are to be treated as non-trading debits or non-trading credits, shall be determined in accordance with subsection (5) below (in the case of interest) or subsection (6) below (in the case of an exchange gain or loss). 30
- (5) In the case of interest, any such question shall be determined according to the extent (if any) to which the interest –
- (a) is paid for the purposes of a trade carried on by the company;
 - (b) is received in the course of activities forming an integral part of such a trade; or 35
 - (c) in the case of deemed interest, would be deemed to be so paid or received.
- (6) In the case of an exchange gain or loss, any such question shall be determined according to the extent (if any) to which the money debt – 40
- (a) is owed by the company for the purposes of a trade carried on by the company; or
 - (b) is held in the course of activities forming an integral part of such a trade. 45
- (7) Any debits or credits which –
- (a) relate to interest payable under the Tax Acts, and

- (b) fall to be brought into account by virtue of this section in relation to any company,
are to be treated as non-trading debits or credits.
- (8) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of the Corporation Tax Acts as being party to the relationship for the purposes of a trade carried on by the company. 5
- (9) No exchange gains or losses shall be taken to arise for the purposes of this section if the money debt in question – 10
- (a) is an amount of tax,
- (b) is an amount of tax payable under the law of a territory outside the United Kingdom, or
- (c) is an amount which would, but for any statutory provision or rule of law to the contrary other than section 74(1)(f) or (g) of the Taxes Act 1988, be deductible as an expense in computing profits in accordance with Case I of Schedule D or as an expense of management within section 75 of the Taxes Act 1988, 15
- except to the extent that, in the case of a money debt falling within paragraph (b) above, a reduction in respect of the tax there mentioned falls to be made under section 811 of the Taxes Act 1988 (double taxation relief: deduction for foreign tax where no credit allowable). 20
- (10) For the purposes of this section so far as relating to exchange gains and losses, each of the following shall be treated as a money debt owed to a company – 25
- (a) any currency held by the company;
- (b) in the case of a company carrying on insurance business, any deferred acquisition costs, within the meaning of Assets item G.II in the Balance Sheet Format set out after paragraph 9 of Schedule 9A to Companies Act 1985 (form and content of accounts of insurance companies and groups) as read with note (17) of the Notes on the Balance Sheet Format (which follow immediately after that format). 30 35
- (11) For the purposes of this section so far as relating to exchange gains and losses, each of the following shall be treated as a money debt owed by a company –
- (a) any provision made by the company for the purposes of its statutory accounts in respect of a liability to which the company may become subject; 40
- (b) in the case of a company carrying on insurance business –
- (i) any provision made by the company for unearned premiums, within the meaning of Liabilities item C.1 in the Balance Sheet Format set out after paragraph 9 of Schedule 9A to Companies Act 1985, as read with note (20) of the Notes on the Balance Sheet Format (which follow immediately after that format); 45
- (ii) any provision for unexpired risks, as defined in paragraph 81(1) of that Schedule. 50

- (12) A provision does not fall within paragraph (a) of subsection (11) above unless –
- (a) the duty to settle the liability in question would (if the company were to become subject to it) be owed for the purposes of a trade or Schedule A business; and
 - (b) the provision falls to be taken into account (apart from this Chapter) in computing the profits or losses of the trade or Schedule A business for corporation tax purposes.
- (13) This section has effect subject to the provisions of Schedules 9 and 11 to this Act.”.

Interpretation

- 7 (1) Section 103 is amended as follows.
- (2) In subsection (1) (definitions) insert each of the following definitions at the appropriate place –
- ““exchange gain” and “exchange loss” shall be construed in accordance with subsections (1A) and (1B) below;”;
 - ““related transaction” shall be construed in accordance with section 84 above (see subsections (5) and (6) of that section);”;
- (3) After subsection (1) insert –
- “(1A) References in this Chapter to exchange gains or exchange losses, in the case of any company, are references respectively to –
- (a) profits or gains, or
 - (b) losses,
- which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company.
- If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Chapter an exchange gain of nil shall be taken to arise in the case of that comparison.
- (1B) Any reference in this Chapter to an exchange gain or loss from a loan relationship of a company is a reference to an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company.”.

Bad debt etc: cases where departure allowed from assumption of prompt payment in full

- 8 (1) Paragraph 5 of Schedule 9 is amended as follows.
- (2) After sub-paragraph (1) (departure from assumption of full and prompt payment of debt allowed only to extent debt is bad debt etc) insert –
- “(1A) Such a departure shall be made only where the first and second conditions (set out in sub-paragraphs (2) and (2A) below) are satisfied.”.
- (3) In sub-paragraph (2) (requirement for appropriate adjustments in form of credits where bad debt etc is paid or departure otherwise ceases to be

allowed) for “Such a departure shall be made only where” substitute “The first condition is that”.

(4) After sub-paragraph (2) insert –

“(2A) The second condition is that, in determining the credits and debits to be brought into account in respect of exchange gains and losses, the accounting arrangements allowing the departure require a debt –

(a) to be left out of account, to the extent that such a departure is allowed; and

(b) to be taken into account again, to the extent that it is represented by credits brought into account under sub-paragraph (2) above.”.

Bad debts etc where parties have a connection

9 (1) Paragraph 6 of Schedule 9 is amended as follows.

(2) In sub-paragraph (3) (assumption that debts will be paid in full to be applied as if no departure authorised by virtue of paragraph 5 except as provided by sub-paragraph (4)) for “paragraph 5” substitute “paragraph 5(1)”. 15

(3) At the end of the paragraph add –

“(8) Nothing in this paragraph affects the debits or credits to be brought into account for the purposes of this Chapter in respect of exchange gains or losses arising from a debt.”. 20

Transactions not at arm’s length

10 (1) Paragraph 11 of Schedule 9 is amended as follows.

(2) In sub-paragraph (1), for “Subject to sub-paragraphs (2) and (3) below,” substitute “Subject to sub-paragraphs (2) to (3A) below,”. 25

(3) After sub-paragraph (3) insert –

“(3A) Sub-paragraph (1) above shall not apply to any profit or gain, or any loss, which arises as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on any asset or liability.”. 30

Exchange gains and losses where loan not on arm’s length terms

11 After paragraph 11 of Schedule 9 insert the following paragraph –

“Exchange gains and losses where loan not on arm’s length terms

11A (1) Where a company has a debtor relationship in an accounting period and in the case of that accounting period – 35

(a) the whole of any interest or other distribution out of the assets of the company in respect of securities of the company that represent the relationship falls by virtue of section 209(2)(da) or (e)(vii) of the Taxes Act 1988 to be regarded as a distribution for the purposes of the Corporation Tax Acts, or 40

- (b) the profits and losses of the company fall by virtue of Schedule 28AA to that Act (provision not at arm’s length) to be computed for tax purposes as if the loan had not been made,
 any exchange gains or losses which arise in that accounting period in respect of a liability representing the debtor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter. 5
- (2) Where a company has a debtor relationship in an accounting period and in the case of that accounting period – 10
- (a) part of any interest or other distribution out of the assets of the company in respect of securities of the company that represent the relationship falls by virtue of section 209(2)(da) or (e)(vii) of the Taxes Act 1988 to be regarded as a distribution for the purposes of the Corporation Tax Acts, or 15
- (b) the profits and losses of the company fall by virtue of Schedule 28AA to that Act to be computed for tax purposes as if the loan had in part not been made,
 the proportionate part of any exchange gains or losses which arise in that accounting period in respect of a liability representing the debtor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter. 20
- (3) In sub-paragraph (2) above, the “proportionate part” of an exchange gain or loss is that part which bears to the whole the proportion which – 25
- (a) in a case falling within paragraph (a) of that sub-paragraph, the part of the interest or other distribution out of assets that falls to be regarded as a distribution for the purposes of the Corporation Tax Acts bears to the whole of that interest or other distribution out of assets; or 30
- (b) in a case falling within paragraph (b) of that sub-paragraph, the part of the loan that falls to be treated as if it had not been made bears to the whole of the loan. 35
- (4) Where –
- (a) a company has a creditor relationship in an accounting period,
 (b) the transaction giving rise to the loan is such that it would not have been entered into at all if the parties had been dealing at arm’s length, and 40
- (c) there is no corresponding debtor relationship such that there would fall to be brought into account for the purposes of this Chapter, in respect of exchange gains or losses from that debtor relationship, debits or (as the case may be) credits corresponding to, and of the same amount as, the credits or debits that would (apart from this paragraph) fall to be brought into account for the purposes of this Chapter in respect of exchange gains or losses from the creditor relationship, 45
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any exchange gains or losses which arise in that accounting period in respect of an asset representing the creditor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter.

- (5) Where— 5
- (a) a company has a creditor relationship in an accounting period,
 - (b) the circumstances are such that, had the parties to the transaction giving rise to the loan been dealing at arm's length, the terms would have been the same, except that the amount of the loan would have been an amount (referred to in sub-paragraph (6) below as "the adjusted amount") greater than nil but less than its actual amount, and 10
 - (c) there is no such corresponding debtor relationship as satisfies, in relation to that creditor relationship, the condition set out in sub-paragraph (4)(c) above, 15
- sub-paragraph (4) above shall not apply, but the excess portion of any exchange gain or loss which arises in the accounting period in respect of an asset representing the creditor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter. 20
- (6) In sub-paragraph (5) above, the "excess portion" of an exchange gain or loss is so much of the gain or loss as remains after subtracting that part which bears to the whole the proportion which the adjusted amount bears to the amount of the loan." 25

Continuity of treatment: groups etc

- 12 In paragraph 12 of Schedule 9, for sub-paragraph (8) (which applies sub-paragraphs (4) and (5) of paragraph 11 of the Schedule) substitute—
- "(8) Sub-paragraph (5) of paragraph 11 above has effect for the purposes of this paragraph as it has effect for the purposes of that paragraph." 30

Loan relationships for unallowable purposes

- 13 In paragraph 13 of Schedule 9, for sub-paragraph (1) (which disallows debits attributable to unallowable purposes) — 35
- (a) for "the debits", where first occurring, substitute the following paragraphs —
 - "(a) the debits, and
 - (b) the credits in respect of exchange gains,"; and
 - (b) after "the debits", where next occurring, insert "or credits (as the case may be)". 40

Special provisions for insurers: apportionments

- 14 (1) Schedule 11 (loan relationships: special provisions for insurers) is amended as follows.

- (2) In paragraph 3A (cases where money debt of insurance company is represented by a liability of the long term business fund) in sub-paragraph (1) –
- (a) in paragraph (a), for “money debt” substitute “loan relationship”; and
 - (b) in paragraph (b), omit “debt or”.

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Savings and transitional provisions in the Finance Act 1996

- 15 In Schedule 15 (savings and transitional provisions) omit paragraphs 22 to 24.

PART 2

10

AMENDMENTS OF OTHER LEGISLATION

The Income and Corporation Taxes Act 1988

Charges on income

- 16 (1) Section 494 of the Taxes Act 1988 is amended in accordance with the following provisions of this paragraph. 15
- (2) Subsection (2) (debts not to be brought into account in a manner which results in the reduction of what would otherwise be the company’s ring fence profits, except as provided in the subsequent paragraphs) is amended as follows.
- (3) In paragraph (c) (debts in respect of a deemed loan relationship) – 20
- (a) for “a loan relationship deemed to exist for the purposes of section 100 of that Act,” substitute “a relationship to which section 100 of that Act applies,”;
 - (b) after “to the extent that” insert “(i)”; and
 - (c) after “above;” insert “or 25
 - (ii) the exchange loss arising from that relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure;
- as the case may be;” 30
- (4) In paragraph (d) (debts in respect of debtor relationship which is creditor relationship of associated company) –
- (a) for “in the case of debits” substitute “in the case of a net debit for an accounting period”; and
 - (b) for “the debit”, in both places where occurring, substitute “the net debit” 35
- (5) In the second sentence of that subsection (interpretation) for “any loan relationship deemed to exist for the purposes of section 100 of that Act” substitute “any relationship to which section 100 of that Act applies”.
- (6) After the second sentence insert the following as a third sentence – 40
- “For the purposes of paragraph (d) above, the net debit for an accounting period in respect of a debtor relationship of a company is the amount if any by which –

- (i) the aggregate of the debits for the period in respect of the relationship, exceeds
 - (ii) the credits in respect of exchange gains arising from the relationship for the period.”.
- (7) After subsection (2) insert – 5
 - “(2ZA) Credits in respect of exchange gains from a company’s loan relationships shall not be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of any loan relationship of a company in any manner that results in an increase of what would otherwise be the company’s ring fence profits, except to the extent that, if the credit had been a debit in respect of an exchange loss from the relationship, it would have been brought into account by virtue of any of paragraphs (a) to (c) of subsection (2) above.”. 10
- (8) In subsection (2A) (debts prevented from reducing ring fence profits by subsection (2) to be brought into account for purposes of Chapter 2 of Part 4 of Finance Act 1996 (c. 8) as non-trading debits) – 15
 - (a) after “Where any debit” insert “or credit”;
 - (b) in paragraph (b) –
 - (i) after “in accordance with subsection (2)” insert “or (2ZA)”;
 - and
 - (ii) after “reduction” insert “or, as the case may be, increase”; and
 - (c) in the closing words –
 - (i) after “that debit” insert “or credit”; and
 - (ii) after “non-trading debit” insert “or, as the case may be, non-trading credit”. 25
- (9) After subsection (2A) insert –
 - “(2B) Where, in accordance with subsection (2) above, any proportion (including the whole) of a net debit, within the meaning of paragraph (d) of that subsection, cannot be brought into account in a manner that results in any reduction of what would otherwise be the company’s ring fence profits, subsection (2A) above shall apply – 30
 - (a) separately in relation to that proportion of each of the debits and each of the credits brought into account in determining the amount of the net debit, and 35
 - (b) on the assumption that that proportion of each of those debits and credits falls within paragraph (b) of that subsection.”.

Supplementary charge in respect of ring fence trades

- 17 (1) In section 501A of the Taxes Act 1988, subsection (5) (computation of financing costs) is amended as follows. 40
- (2) In paragraph (a) (costs giving rise to debits in respect of debtor relationships) after “(loan relationships)” insert “, other than debits in respect of exchange losses from such relationships (see section 103(1A) and (1B) of that Act)”.
- (3) For paragraph (b) (exchange gain or loss, within the meaning of Chapter 2 of Part 2 of the Finance Act 1993 (c. 34), in relation to debt finance) substitute – 45

- “(b) any exchange gain or loss from a debtor relationship, within the meaning of that Chapter (see section 103(1A) and (1B) of that Act), in relation to debt finance;”.

Controlled foreign companies

- 18 In section 747A of the Taxes Act 1988 (controlled foreign companies: special rule for computing chargeable profits) in subsection (9), for paragraph (b) (which defines “the appointed day” as such day as may be appointed under section 165(7)(b) of the Finance Act 1993 (c. 34)) substitute – 5
 “(b) “the appointed day” is 23rd March 1995.”.

Double taxation relief 10

- 19 (1) Section 798B of the Taxes Act 1988 (adjustments of interest and dividends for spared tax etc) is amended as follows.
 (2) In subsection (5) (meaning of “qualifying losses”) for paragraph (a) (exchange losses under Finance Act 1993) substitute – 15
 “(a) exchange losses falling to be brought into account as debits for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships); and”.

Provision not at arm’s length: foreign exchange gains and losses

- 20 (1) In Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) paragraph 8 (foreign exchange gains and losses etc) is amended as follows. 20
 (2) In sub-paragraph (1) (exceptions) –
 (a) for “Subject to sub-paragraph (2)” substitute “Subject to sub-paragraph (3)”; and
 (b) for paragraph (a) (which relates to Chapter 2 of Part 2 of the Finance Act 1993) substitute – 25
 “(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) in respect of exchange gains or losses from loan relationships (as defined in section 103(1A) and (1B) of that Act), or”.
- (3) For sub-paragraph (2) (saving for certain provisions of sections 136 and 136A of the Finance Act 1993 (application of arm’s length test)) substitute – 30
 “(3) Sub-paragraph (1) above shall not affect so much of paragraph 11A of Schedule 9 to the Finance Act 1996 (loan relationships: exchange gains or losses where loan not on arm’s length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if the whole or any part of a loan had not been made.”. 35

The Finance Act 1995

Miscellaneous amendments

- 21 (1) The Finance Act 1995 (c. 4) is amended as follows. 40
 (2) Omit section 131 (which made transitional provision in relation to exchange gains and losses and which is spent).

- (3) In Part 2 of Schedule 24 (amendments of certain enactments) in paragraph 7 (commencement on day appointed under section 165(7)(b) of Finance Act 1993 (c. 34)) for the words following “come into force on” substitute “23rd March 1995”.

The Finance Act 2000

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Tonnage tax

- 22 (1) Schedule 22 to the Finance Act 2000 (c. 17) is amended as follows.
- (2) In paragraph 50 (relevant shipping income: certain interests etc) in sub-paragraph (2) (income to which paragraph 50 applies) at the end of paragraph (a) insert “and”.
- (3) In paragraph 63 (meaning of “finance costs”) in sub-paragraph (2)(c) (exchange gain or loss) for “within the meaning of Chapter II of Part II of the Finance Act 1993” substitute “within the meaning given by section 103(1A) of the Finance Act 1996”.

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The Finance Act 2002

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Intangible fixed assets: assets entirely excluded: financial assets

- 23 (1) Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 75 (assets entirely excluded: financial assets) in sub-paragraph (3) for paragraph (a) (money debts) substitute –
- “(a) loan relationships;”.

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PART 3

TRANSITIONAL PROVISIONS ETC

Anti-avoidance: change of accounting period

- 24 (1) This paragraph applies where –
- (a) a company changes its accounting date so that it has an accounting period which begins on or after 1st October 2001 but ends before 30th September 2002; and
- (b) the change of accounting date is or was made for the purpose, or for purposes which include the purpose, specified in sub-paragraph (2).
- (2) The purpose is that of securing, in the case of any subsequent accounting period beginning before 1st October 2002, –
- (a) that where an amount, or a bigger amount, would have fallen to be brought into account as a credit under Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) if the other provisions of this Schedule had had effect in relation to the period, no amount, or a smaller amount, falls to be brought into account in accordance with section 128 or 130 of the Finance Act 1993; or
- (b) that where no amount, or a smaller amount, would have fallen to be brought into account as a debit under that Chapter if the other provisions of this Schedule had had effect in relation to the period,

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- an amount, or a bigger amount, falls to be brought into account in accordance with section 128 or 130 of the Finance Act 1993.
- (3) Where this paragraph applies, the other provisions of this Schedule shall have effect in relation to the subsequent accounting period mentioned in sub-paragraph (2) as if it were an accounting period beginning on or after 1st October 2002. 5
- (4) In this paragraph, any reference to this Schedule includes a reference to –
- (a) subsection (1) of section 78;
 - (b) the amendments made by Schedule 24, so far as relating to the amendments and other provisions made by or under this Schedule; 10
and
 - (c) any repeal of any enactment which is consequential on any provision made by or under this Schedule.

Deferred foreign exchange gains

- 25 (1) The repeal of sections 139 to 143 of the Finance Act 1993 (c. 34) (foreign exchange gains and losses) does not prevent the making of a claim under section 139 of that Act (deferral of unrealised gains) by a company in respect of a gain accruing in an accrual period which begins with, or at any time in, the last accounting period of the company which begins before 1st October 2002; but any such claim shall have effect subject to the following provisions of this paragraph and (subject to regulations under section 80) regulations under Chapter 2 of Part 2 of that Act. 15
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- (2) Amounts which, but for the repeal of subsections (4) to (10) of section 140 of the Finance Act 1993, would fall to be treated by virtue of those subsections as exchange gains for an accrual period which consists of, or falls in, an accounting period beginning on or after 1st October 2002 – 25
- (a) shall be brought into account for that accounting period as if they were credits falling for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) to be brought into account in respect of the company's loan relationships; 30
 - (b) shall be treated for the purposes of that Chapter as non-trading credits, to the extent that they would, but for the repeal of subsections (5), (8) or (9) of section 140 of the Finance Act 1993, have fallen to be treated by virtue of those subsections as non-trading exchange gains; and 35
 - (c) except as provided by paragraph (b), shall be brought into account under section 82(2) of the Finance Act 1996 (trading credits).
- (3) Before the expiration of the period of 2 years following the end of its first accounting period beginning on or after 1st October 2002, a company may elect for any amounts that would otherwise fall to be brought into account for that accounting period in accordance with paragraph (a) of sub-paragraph (2) instead to be brought into account in accordance with that sub-paragraph, but – 40
- (a) over the first 6 accounting periods of the company which begin on or after 1st October 2002; and 45
 - (b) in instalments of an equal amount for each such accounting period.
- (4) If a company –
- (a) makes an election under sub-paragraph (3), but

- (b) ceases to be within the charge to corporation tax before six accounting periods of the company which begin on or after 1st October 2002 have elapsed,
any instalment under that sub-paragraph which does not fall to be brought into account for an earlier accounting period shall be brought into account for the accounting period in which the company ceases to be within the charge to corporation tax. 5
- (5) The provision that may be made by regulations under subsection (8) of section 84A of the Finance Act 1996 (c. 8) includes provision for amounts which have been reduced to nil under regulations made under paragraph 4 of Schedule 15 to the Finance Act 1993 (c. 34) (alternative method of calculation) to be brought into account (as defined in subsection (9) of that section) for an accounting period beginning on or after 1st October 2002. 10

SCHEDULE 24

Section 79

CORPORATION TAX: CURRENCY 15

The Finance Act 1993

Introductory

- 1 The Finance Act 1993 is amended as follows.

The basic rule: sterling to be used

- 2 In section 92(1) (which provides that the basic rule is subject to section 93) for “section 93” substitute “sections 93 and 93A”. 20

Use of currency other than sterling: accounts as a whole etc in foreign currency

- 3 (1) Section 93 is amended as follows.
- (2) In subsection (1) (application of section) for “either the first condition or the second condition” substitute “the condition in subsection (2) below”. 25
- (3) In subsection (2) (the first condition), for “The first condition is” substitute “The condition is”.
- (4) Omit subsection (3) (the second condition, which is superseded by the new section 93A inserted by paragraph 4).
- (5) Omit subsection (6) (different parts carried on through different branches, which is superseded by the new section 93A). 30
- (6) In subsection (7) (definitions) omit the definitions of –
- (a) “branch”; and
- (b) “the closing rate/net investment method”.
- (7) In subsection (7), in the definition of “the relevant foreign currency” for “the first condition” substitute “the condition in subsection (2) above”. 35
- (8) In consequence of the amendments made by this paragraph, the sidenote to the section becomes “Use of currency other than sterling: accounts as a whole etc in foreign currency.”.

Use of currency other than sterling: accounts etc partly from statements in foreign currency

4 After section 93 insert –

“93A Use of other currency: accounts partly from statements in foreign currency

- (1) This section applies where in an accounting period a company carries on a business and either the first condition or the second condition is fulfilled. 5
- (2) The first condition is that –
- (a) the accounts of the company as a whole are prepared in sterling but, so far as relating to part of the business, they are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency other than sterling; or 10
- (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in sterling but, so far as relating to part of the business, it is prepared, using that method, from financial statements and records prepared in a currency other than sterling. 15
- (3) The second condition is that – 20
- (a) the accounts of the company as a whole are prepared in a currency other than sterling (“the first currency”) in accordance with generally accepted accounting practice but, so far as relating to part of the business, they are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency (“the second currency”) which is neither sterling nor the first currency; or 25
- (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in a currency other than sterling (“the first currency”) in accordance with generally accepted accounting practice, but, so far as relating to part of the business, it is prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency (“the second currency”) which is neither sterling nor the first currency. 30 35
- (4) The profits or losses of the part of the business for an accounting period shall for the purposes of corporation tax be found by –
- (a) taking the amount of all the profits and losses of the part of the business for the period computed and expressed in the relevant foreign currency; and 40
- (b) taking –
- (i) in a case where the first condition is fulfilled, the sterling equivalent, or
- (ii) in a case where the second condition is fulfilled, the equivalent in the first currency, 45
- of the amount found by applying paragraph (a) above.

- (5) In a case where the second condition is fulfilled, effect shall be given to subsection (4) above before effect is given to section 93(4) above.
- (6) In the application for the purposes of subsection (4)(a) above of –
(a) section 578A(2) or (3) of the Taxes Act 1988, or
(b) section 43(3), 74(2), 75(1), 76(2), (3) or (4), 99(1), (2) or (3) or 208(1) of the Capital Allowances Act, 5
it shall be assumed that any sterling amount mentioned in any of those sections is its equivalent expressed in the relevant foreign currency.
- (7) Where for any accounting period – 10
(a) the accounts of the company, so far as relating to a part of its business, are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency which is not sterling and, where the second condition is fulfilled, is not the first currency, or 15
(b) in the case of a company which is not resident in the United Kingdom, its return of accounts for its branch in the United Kingdom, so far as relating to a part of the company’s business, is prepared, using that method, from such financial statements and records, 20
then, if different such financial statements and records are prepared in different currencies, the company shall be treated for the purposes of this section as having a separate part of a separate business for each such different currency (and this section shall accordingly apply separately in relation to each such part). 25
- (8) In this section, “part of a business” includes any collection of assets and liabilities.
- (9) In this section, unless the context otherwise requires –
“accounts” has the same meaning as in section 93 above;
“the closing rate/net investment method” means the method so 30
called as described under the title “Foreign currency translation” in the Statement of Standard Accounting Practice issued in April 1983 by the Institute of Chartered Accountants in England and Wales;
“losses” has the same meaning as in section 92 above, except 35
that it does not include allowable losses within the meaning of the Taxation of Chargeable Gains Act 1992;
“profits” has the same meaning as in section 92 above, except
that it does not include chargeable gains within the meaning 40
of that Act;
“the relevant foreign currency” means the currency in which the financial statements and records mentioned in subsection (2) or, as the case may be, (3) above are prepared;
“return of accounts” has the same meaning as in section 93 above.”. 45

Rules for ascertaining currency equivalents: general

- 5 For section 94, substitute –

“94AA Rules for ascertaining currency equivalents: general

- (1) Where any receipt or expense, or the value of any asset, liability or derivative contract, of a company –
- (a) is to be taken into account in making a computation under subsection (1) of section 92 above for an accounting period, and
- (b) is denominated in a currency other than sterling,
- it shall be translated into its sterling equivalent by reference to a rate determined in accordance with subsection (4) below. 5
- (2) Where the amount of any receipt or expense, or the value of any asset, liability or derivative contract, of a company – 10
- (a) falls to be brought into account for the purposes of the accounts mentioned in paragraph (a), or the return of accounts mentioned in paragraph (b), of subsection (2) of section 93 above, 15
- (b) is denominated in a currency other than the relevant foreign currency, within the meaning of that section, and
- (c) accordingly falls to be translated into the relevant foreign currency,
- the amount or value shall for the purposes of that section be translated from the currency mentioned in paragraph (b) above into the relevant foreign currency by reference to a rate determined in accordance with subsection (4) below. 20
- (3) Where, for any purpose of any provision of section 93A(4) or (6) above, any profit or loss denominated in one currency falls to be translated into its equivalent expressed in another currency, the translation shall be made by reference to a rate determined in accordance with subsection (4) below. 25
- (4) The rate is –
- (a) the rate used in the preparation of the accounts of the company for the accounting period in question, if that rate is an arm’s length exchange rate for the relevant day, or 30
- (b) in any other case, the London closing exchange rate for the relevant day.
- (5) The reference in subsection (4)(a) above to the exchange rate used in the preparation of the accounts of the company includes a reference to any exchange rate implied by a derivative contract whose underlying subject matter is currency. 35
- (6) Nothing in this section affects the operation of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies). 40
- (7) Nothing in paragraph 88 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent an amount being translated under this section for an accounting period by reference to an exchange rate which was not the exchange rate used to translate that amount for the purposes of the Corporation Tax Acts for another accounting period (whether of the same or a different company). 45

- (8) In this section –
- “accounts” has the same meaning as in section 93 above;
 - “arm’s length exchange rate” means such exchange rate as might reasonably be expected to be agreed between persons dealing at arm’s length; 5
 - “derivative contract” shall be construed in accordance with Schedule 26 to the Finance Act 2002;
 - “the relevant day” –
 - (a) where the rate used in the preparation of the accounts is an exchange rate for a particular day, means that day; and 10
 - (b) where the rate used in the preparation of the accounts is an average rate for a number of days, means each of those days;
 - “underlying subject matter”, in relation to a derivative contract, shall be construed in accordance with Schedule 26 to the Finance Act 2002. 15

Rules for ascertaining sterling equivalent for section 93(4) or (5)

6 After section 94AA insert –

“94AB Rules for ascertaining sterling equivalent for section 93(4) or (5)” 20

- (1) Where the amount of any receipt or expense, or the value of any asset, liability or derivative contract, of a company falls to be translated into its sterling equivalent for the purposes of section 93(4) or (5) above, the translation shall be made by reference to a rate which is an arm’s length exchange rate for the appropriate day. 25
- (2) For the purposes of subsection (1) above, the “appropriate day” is the day the rate for which would have been used if the accounts, or return of accounts, of the company were translated into sterling in accordance with generally accepted accounting practice in relation to foreign currency translation. 30
- (3) Nothing in this section affects the operation of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies).
- (4) Nothing in paragraph 88 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent an amount being translated under this section for an accounting period by reference to an exchange rate which was not the exchange rate used to translate that amount for the purposes of the Corporation Tax Acts for another accounting period (whether of the same or a different company). 35
- (5) In this section – 40
 - “accounts” has the same meaning as in section 93 above;
 - “arm’s length exchange rate” has the same meaning as in section 93AA;
 - “derivative contract” shall be construed in accordance with Schedule 26 to the Finance Act 2002.”. 45

*The Finance Act 1994**Lloyd's underwriters: corporations etc*

- 7 (1) Section 226 of the Finance Act 1994 (c. 9) (provisions which are not to apply to corporate members of Lloyd's) is amended as follows.
- (2) Subsection (1) (which prevents sections 92 to 95 of the Finance Act 1993 (c. 34) from applying) shall cease to have effect (and sections 92 to 94AB of that Act shall accordingly apply for the purposes of computing for the purposes of corporation tax the profits or losses of a corporate member's underwriting business). 5

SCHEDULE 25

Section 81 10

LOAN RELATIONSHIPS

PART 1

AMENDMENTS OF THE FINANCE ACT 1996

Introductory

- 1 Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) is amended in accordance with the following provisions of this Part of this Schedule. 15

Meaning of "loan relationship" etc: method of settlement

- 2 (1) Section 81 is amended as follows.
- (2) In subsection (2) (which defines a money debt as a debt which falls to be settled by the payment of money etc) – 20
- (a) for "which falls" substitute "which is, or has at any time been, one that falls, or that may at the option of the debtor or of the creditor fall,"; and
- (b) after paragraph (b) insert – 25
- "disregarding any other option exercisable by either party."

Non-trading deficit on loan relationships

- 3 (1) Section 83 is amended as follows.
- (2) In subsection (2) (ways in which relief may be given on a claim in respect of the whole or any part of the deficit) after "the deficit", where first occurring, insert "(to the extent that it is not surrendered as group relief by virtue of section 403 of the Taxes Act 1988)". 30
- (3) At the end of paragraph (a) of that subsection (claim to set off against other profits of the period) insert "or".
- (4) Paragraph (b) of that subsection (claim to treat as eligible for group relief) shall cease to have effect. 35

- (5) Paragraph (d) of that subsection (claim to carry forward and set against non-trading profits of next accounting period) shall cease to have effect.
- (6) For subsection (3) (any balance to be carried forward and treated as a deficit of the next accounting period) substitute –
- “(3A) So much of the deficit for the deficit period as is not – 5
- (a) surrendered as group relief by virtue of section 403 of the Taxes Act 1988, or
- (b) treated in any of the ways specified in subsection (2) above, shall be carried forward and set against non-trading profits of the company for succeeding accounting periods. 10
- (7) Subsection (4) (provisions relating to amount carried forward and treated as deficit for next accounting period, which becomes of no further utility) shall cease to have effect.
- (8) In subsection (9) (which introduces Schedule 8) for “subsection (2) above” substitute “subsection (2)(a) or (c) above or where subsection (3A) above has effect”. 15

Debits and credits brought into account

- 4 (1) Section 84 is amended as follows.
- (2) In subsection (2)(b) (which provides that the reference in subsection (1) to profits, gains and losses includes any which, in accordance with normal accountancy practice, are carried to or sustained by certain reserves) for “normal accountancy practice” substitute “generally accepted accounting practice”. 20
- (3) After subsection (4) insert –
- “(4A) Where – 25
- (a) different authorised accounting methods are used for the purposes of this Chapter as respects the same loan relationship for different parts of the same accounting period or for successive accounting periods, and
- (b) no debit or credit falls to be brought into account under subsection (2)(c) or (3)(b) of section 90 below in consequence of the change of method, but 30
- (c) an amount is brought into account for the purposes of the company’s statutory accounts in respect of the change of method, 35
- that amount shall be taken for the purposes of this Chapter to be included among the sums in respect of which debits and credits fall to be brought into account for the purposes of this Chapter in accordance with subsection (1)(a) above.”.

Authorised accounting methods 40

- 5 (1) Section 85 is amended as follows.
- (2) In subsection (2) (accounting methods authorised only if the conditions in the paragraphs of the subsection are satisfied) for paragraph (a) (conformity to normal accountancy practice) substitute –

- “(a) subject to paragraphs (b) to (c) below, it is in conformity with generally accepted accounting practice to use that method in that case;”.
- (3) In paragraph (b) of that subsection (provision for allocating payments under a loan relationship to accounting periods) after “payments under a loan relationship” insert “, or arising as a result of a related transaction,”. 5
- (4) After subsection (4) insert –
- “(4A) In the case of any basis of accounting, proper provision for allocating payments arising as a result of related transactions to accounting periods is provision which allocates any such payment to the accounting period in which it arises.”. 10

Application of accounting methods

- 6 (1) Section 86 is amended as follows.
- (2) In subsection (3) (method to be used where basis used in statutory accounts is, or equates to, an authorised accounting method) after paragraph (b) insert – 15
- “but this subsection is subject to subsections (3A) and (3D) below.”.
- (3) After subsection (3) insert –
- “(3A) If, in the case of a company falling within subsection (8)(c) or (d) below, an authorised mark to market basis of accounting – 20
- (a) would be used as respects some or all of the company’s loan relationships, were the company a UK company following generally accepted accounting practice, but
- (b) is not the basis of accounting used as respects those loan relationships in the company’s statutory accounts, 25
- the company may elect to use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Chapter in relation to every loan relationship as respects which that basis would be used if the company were a UK company following generally accepted accounting practice. 30
- (3B) Any election under subsection (3A) above –
- (a) must be made before the expiration of the period of two years following the end of the company’s first accounting period beginning on or after 1st October 2002 in which it is party to a loan relationship in relation to which such an election may be made; 35
- (b) has effect for that accounting period and all subsequent accounting periods of the company; and
- (c) is irrevocable.
- (3C) A company which makes an election under sub-paragraph (3A) above as respects its loan relationships shall be taken for the purposes of Schedule 26 to the Finance Act 2002 (derivative contracts) to have at the same time made an election under sub-paragraph (2) of paragraph 19 of that Schedule having effect – 40
- (a) for the accounting periods mentioned in subsection (3B)(b) above, and 45

- (b) as respects any derivative contracts to which the company is or may become party in any of those accounting periods, and that election shall so have effect notwithstanding anything in paragraph (a) or (b) of sub-paragraph (3) of that paragraph.
- (3D) If, in the case of a company falling within subsection (8)(c) or (d) below which has not made an election under subsection (3A) above, – 5
- (a) an authorised mark to market basis of accounting would be used for an accounting period –
- (i) as respects some or all of the company’s loan relationships, and 10
- (ii) as respects some or all of the company’s derivative contracts,
- were the company a UK company following generally accepted accounting practice, and 15
- (b) that basis of accounting –
- (i) is used in the company’s statutory accounts as respects those derivative contracts for that accounting period, but
- (ii) is not the basis of accounting used in those accounts as respects those loan relationships for that accounting period, 20
- the company must for that accounting period use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Chapter in relation to every loan relationship as respects which that basis would be used if the company were a UK company following generally accepted accounting practice.”. 25
- (4) In subsection (4) (authorised accruals basis to be used where authorised accounting method not determined under subsection (3)) for “determined under subsection (3) above,” substitute the following paragraphs – 30
- “(a) a method determined under subsection (3) above,
- (b) an authorised mark to market method in accordance with an election under subsection (3A) above, or
- (c) an authorised mark to market method in accordance with subsection (3D) above,”. 35
- (5) In subsection (7) (meaning of “fair value”) the words from ““fair value”” onwards become a separate definition and after that definition insert the following definition –
- ““UK company” means a company incorporated or formed under the law of a part of the United Kingdom.”. 40
- (6) In subsection (8) (meaning of “statutory accounts” in the section) for “In this section” substitute “In this Chapter”.

Accounting method where parties have a connection

- 7 (1) Section 87 is amended as follows. 45
- (2) In subsection (3) (meaning of connection between company and another person) in paragraph (a) (case where one company has had control of the other in an accounting period or in the two years preceding it) –

- (a) omit “, or in the two years before the beginning of that period,”; and
 (b) at the end of the paragraph, insert “or”.
- (3) In paragraph (b) of that subsection (case where both companies under control of same person in that period or those two years) omit “, or in those two years,”. 5
- (4) Omit paragraph (c) of that subsection (company was close company and other person was participator or associate of participator in that period or those two years).
- (5) In subsection (5) (persons indirectly standing in position of creditor or debtor by reference to a series of loan relationships) after “series of loan relationships” insert “or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor”. 10
- (6) After subsection (5) insert –
- “(5A) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question – 15
- (a) whether there is for the purposes of this Chapter a connection, within the meaning of this section, between any two companies for an accounting period in the case of a loan relationship, or 20
- (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of there being, or not being, such a connection,
- shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt. 25
- The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000. 30
- (5B) For the purposes of subsection (5A) above, a partner’s “appropriate share” is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section.”. 35
- (7) Omit subsections (6) to (8) (meaning of “control”, “participator” and “associate”). 40

Meaning of “control” in section 87

8 After section 87 insert –

“87A Meaning of “control” in section 87

- (1) For the purposes of section 87 above, “control”, in relation to a company, means the power of a person to secure – 45

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company, 5
- that the affairs of the company are conducted in accordance with his wishes.
- (2) There shall be left out of account for the purposes of this section – 10
- (a) any shares held by a company, and
- (b) any voting power or other powers arising from shares held by a company,
- if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company.
- (3) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this section, as respects any time in an accounting period of the partnership, as if – 15
- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and 20
- (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section, 25
- but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.”. 30

Inconsistent application of accounting methods

- 9 Section 89 (which has become unnecessary because, in accordance with generally accepted accounting practice, a similar adjustment falls to be recognised in the profit and loss account of the company and debits or credits accordingly fall to be brought into account pursuant to section 84(1) of the Finance Act 1996 (c. 8)) shall cease to have effect. 35

Changes of accounting method

- 10 (1) Section 90 is amended as follows. 40
- (2) In subsection (1) (application of section) after “where” insert “(a)” and at the end of the subsection add –
- “(b) the change of method is in pursuance of a requirement of this Chapter as to the basis of accounting to be used for the purposes of this Chapter in the case of the loan relationship; and 45
- (c) the case does not fall within subsection (1A) below”.

(3) After subsection (1) insert –

“(1A) The case falls within this subsection if, for the purposes of the company’s statutory accounts, the different authorised accounting methods mentioned in subsection (1) above are also used as respects the loan relationship for the same parts of the same accounting period or, as the case may be, for the same successive accounting periods as are mentioned in subsection (1) above.”. 5

Payments subject to deduction of tax.

11 Section 91 shall cease to have effect.

Indexed gilt-edged securities 10

12 (1) Section 94 is amended as follows.

(2) After subsection (3) (adjustment of opening value by reference to movement in retail prices index between earlier time and later time) insert –

“(3A) Where the authorised accounting method applied is an accruals basis of accounting, the amount which is the opening value shall be taken to be the amount of the value which (disregarding interest) accrued to the company under the loan relationship before the earlier time.”. 15

(3) In subsection (6) (the percentage increase or decrease in retail prices index) after paragraph (b) insert –

“except that where the earlier time falls at the beginning of an accounting period which begins with the first day of a month, the index for the previous month shall be used for the purposes of paragraph (a) above.”. 20

Manufactured interest

13 (1) Section 97 is amended as follows. 25

(2) In subsection (1) (application of section) –

(a) for “This section applies where –” substitute “For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where –”;

(b) in paragraph (a), for “any company” substitute “the company”; 30

(c) in paragraph (b), for “that relationship” substitute “that loan relationship”; and

(d) after paragraph (b), add –
 “and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly”. 35

(3) For subsection (2) (treatment of the manufactured interest) substitute –

“(2) Where a company has a relationship to which this section applies –

(a) this Chapter shall have effect in relation to the company and the manufactured interest under the relationship – 40

(i) as it would have effect if the manufactured interest were interest payable on a loan by, or (as the case may be) to, the company and were accordingly interest

- under a loan relationship to which the company is a party, and
- (ii) where that company is the company to which the manufactured interest is payable, as if that relationship were the one under which the real interest is payable, but
- (b) the only credits or (subject to subsection (4A) below) debits to be brought into account for the purposes of this Chapter by virtue of this section in respect of a relationship are those relating to that interest,
- and, subject to paragraphs (a)(ii) and (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.”.
- (4) After subsection (3) (trading and non-trading debits and credits) insert –
- “(3A) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of this Chapter as being party to the relationship for the purposes of a trade carried on by the company.”.
- (5) In subsection (4) (which applies the section to a deemed manufactured payment under section 737A(5) of the Taxes Act 1988 as if such a representative payment had in fact been made) before “737A(5)” insert “736B(2) or”.
- (6) After subsection (4) insert –
- “(4A) Where, for the purposes of section 736B of the Taxes Act 1988, a company is the borrower under a stock lending arrangement, then (pursuant to subsection (2A) of that section (which precludes deductions or group relief for the borrower)) no debits are to be brought into account for the purposes of this Chapter by that company in respect of the deemed representative payment under that section which is treated under subsection (4) above as if it had in fact been made.”.

Interpretation: “shares” not to include building society shares

- 14 In section 103(1) (definitions) in the definition of “share”, at the end insert “but does not include a share in a building society”.

Interpretation: miscellaneous

- 15 In section 103(1) (definitions) insert the following definitions at the appropriate place –
- ““derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;”;
- ““statutory accounts” has the meaning given by section 86(8) above”.

Provision continuing to be made on accruals basis after company ceases to be party

- 16 At the end of section 103 (interpretation) insert –

- “(6) Where –
- (a) an accruals basis of accounting is used by a company in respect of a loan relationship, and
 - (b) in accordance with that basis of accounting, provision continues to be made as regards the loan relationship in accounting periods after the accounting period in which the company ceases to be a party to the loan relationship,
- references in this Chapter to the company being party to the loan relationship in an accounting period shall be construed as references to the company being party to the loan relationship in the accounting period to which the provision relates.”.

Claims to treat deficit as eligible for group relief

- 17 In Schedule 8 (loan relationships: claims relating to deficits) paragraph 2 (claims under section 83(2)(b)) shall cease to have effect.

Claim to carry back deficit to previous accounting periods 15

- 18 (1) Paragraph 3 of Schedule 8 is amended as follows.
- (2) In sub-paragraph (2)(a)(i) (which refers to a claim under section 83(2)(a) or (b)) for “under subsection (2)(a) or (b)” substitute “under subsection (2)(a)”.
 - (3) In sub-paragraph (6)(e) (which refers to a claim under section 83(2)(a) or (b)) for “under section 83(2)(a) or (b)” substitute “under section 83(2)(a)”.

Deficit carried forward and set against non-trading profits of succeeding accounting periods

- 19 (1) Paragraph 4 of Schedule 8 (claim to carry forward deficit to next accounting period) is amended as follows.
- (2) For sub-paragraph (1) (application of paragraph) substitute –
 - “(1) This paragraph applies where, pursuant to section 83(3A) of this Act, any of the deficit for a deficit period is to be carried forward and set against non-trading profits for succeeding accounting periods.”.
 - (3) In sub-paragraph (2) (treatment of amount to which the claim relates) for “The amount to which the claim relates” substitute “The amount carried forward from the deficit period, reduced by any amount claimed under sub-paragraph (3) below,”.
 - (4) Re-number sub-paragraph (3) (definition of “non-trading profits”) as sub-paragraph (6) and before that sub-paragraph insert –
 - “(3) The company may make a claim for so much of the amount carried forward from the deficit period as may be specified in the claim to be excepted from being set against non-trading profits of the accounting period immediately following the deficit period.
 - (4) Any claim under sub-paragraph (3) above must be made before the expiration of the period of 2 years following the end of that accounting period.
 - (5) So much of the amount carried forward from the deficit period as –

- (a) cannot be relieved under sub-paragraph (2) above against non-trading profits of the accounting period immediately following the deficit period, or
- (b) is the subject of a claim under sub-paragraph (3) above in respect of that accounting period, 5
- shall be treated for the purposes of this Chapter as if it were an amount of non-trading deficit on the company's loan relationships for that accounting period which, pursuant to section 83(3A) of this Act, falls to be carried forward and set against non-trading profits of succeeding accounting periods (and this paragraph shall apply accordingly).” 10
- (5) In consequence of the amendments made by this paragraph –
- (a) the heading to that paragraph becomes “*Carry forward of deficit to succeeding accounting periods*”; and
- (b) in the title of the Schedule, “Claims” becomes “Claims Etc”. 15

Distributions

- 20 In Schedule 9 (loan relationships: special computational provisions) in paragraph 1, at the beginning insert “(1)” and at the end insert –
- “(2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter.”. 20

Life assurance policies and capital redemption policies

- 21 After paragraph 1 of Schedule 9 insert –
- “*Life assurance policies and capital redemption policies* 25
- 1A (1) The credits and debits to be brought into account for the purposes of this Chapter shall not include any credits or debits relating to –
- (a) a policy of life assurance; or
- (b) a capital redemption policy, within the meaning of Chapter 2 of Part 13 of the Taxes Act 1988. 30
- (2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter.”.

Late interest: further cases where paragraph 2 of Schedule 9 applies 35

- 22 (1) Paragraph 2 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) for the words following “company” substitute “(“the debtor company”) in a case falling within any of sub-paragraphs (1A) to (1D) below.”.
- (3) After sub-paragraph (1) insert – 40
- “(1A) The first case is where there is, for the relevant accounting period, a connection (within the meaning of section 87 of this Act) between the debtor company and a person standing in the position of creditor as respects the loan relationship.

-
- (1B) The second case is where there is a time in the relevant accounting period when the debtor company is a close company and a person standing in the position of a creditor as respects the loan relationship is –
- (a) a participator in the debtor company; 5
 - (b) the associate of a person who is such a participator at that time; or
 - (c) a company of which such a participator has control or in which such a participator has a major interest.
- (1C) The third case is where – 10
- (a) a person standing in the position of a creditor as respects the loan relationship is a company (“the creditor company”); and
 - (b) there is a time in the relevant accounting period when the debtor company has a major interest in the creditor company or the creditor company has a major interest in the debtor company. 15
- (1D) The fourth case is where the loan is one made by trustees of a retirement benefits scheme (as defined in section 611 of the Taxes Act 1988) and – 20
- (a) there is a time in the relevant accounting period when the debtor company is the employer of employees to whom the scheme relates; or
 - (b) there is for the relevant accounting period a connection, within the meaning of section 87 of this Act, between the debtor company and such an employer; or 25
 - (c) a company is such an employer and there is a time in the relevant accounting period when the debtor company has a major interest in that company or that company has a major interest in the debtor company.”. 30
- (4) After sub-paragraph (2) insert –
- “(3) References in this paragraph to a person who stands in the position of a creditor as respects a loan relationship include references to a person who indirectly stands in that position by reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor. 35
 - (4) Where this paragraph applies in relation to a debtor relationship by virtue of sub-paragraph (3) above, the reference to the corresponding creditor relationship in sub-paragraph (2)(b) above is a reference to the creditor relationship of the person who indirectly stands in the position of a creditor as respects the debtor relationship. 40
 - (5) For the purposes of this section, section 414 of the Taxes Act 1988 (meaning of “close company” in the Tax Acts) shall have effect with the omission of subsection (1)(a) (exclusion of companies not resident in the United Kingdom). 45
 - (6) In this paragraph –
“associate” has the meaning given by section 417(3) and (4) of the Taxes Act 1988; 50

- “control” has the same meaning as in section 87 of this Act (see section 87A);
- “participator”, in relation to a close company, means a person who, by virtue of section 417 of the Taxes Act 1988, is a participator in the company for the purposes of Part 11 of that Act, other than a person who is a participator for those purposes by virtue only of being a loan creditor of the company; 5
- “the relevant accounting period” means the accounting period mentioned in sub-paragraph (2)(a) above. 10
- (7) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”.

Bad debts and consortium relief

- 23 In Schedule 9, after paragraph 5 (bad debt etc) insert—
- “*Bad debts and consortium relief* 15
- 5A (1) This paragraph applies where the conditions in sub-paragraphs (2) and (3) below are satisfied.
- (2) The first condition is that by virtue of paragraph 5 above a debit is or has been brought into account for the purposes of this Chapter for any group accounting period by— 20
- (a) a company (“the member company”) which is a member of a consortium by which a consortium company is owned; or
- (b) a company (a “group member”) which is a member of the same group of companies as the member company but is not itself a member of the consortium. 25
- (3) The second condition is that the debit is or was in respect of a creditor relationship of the member company or group member and— 30
- (a) the consortium company, or
- (b) if that company is a holding company, a consortium company which is a subsidiary of that company,
- is or, as the case may be, was the debtor (“the debtor consortium company”).
- (4) Any reference in this paragraph to a “relevant creditor relationship” is a reference to a creditor relationship (whether of the member company or a group member) which falls within sub-paragraph (3) above. 35
- (5) For the purposes of this paragraph there is for any group accounting period a “relevant net debit” in relation to the relevant creditor relationships if— 40
- (a) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by— 45
- (i) the member company, and
- (ii) every group member,
- exceeds

- (b) the total of any related debt recovery credits so brought into account by those companies for that period in respect of those relationships,
 and the amount of the relevant net debit is the amount of that excess. 5
- (6) Where there is for any group accounting period a relevant net debit in relation to the relevant creditor relationships, the amount of the relevant net debit shall be reduced by so much of any amount which—
- (a) may be surrendered as group relief by the debtor consortium company, and 10
- (b) is claimed as group relief for that accounting period by the member company or any group member,
 as does not exceed the amount of the relevant net debit.
- (7) Where a relevant net debit falls to be reduced under sub-paragraph (6) above by any amount (“the relevant reduction”), each of the debits brought into account in determining the relevant net debit shall be reduced by an amount found by apportioning between those debits, in proportion to their respective amounts, the amount of the relevant reduction. 15
 20
- (8) For the purposes of this paragraph there is for any group accounting period a “surplus of related debt recovery credits” in relation to the relevant creditor relationships if—
- (a) the total amount of any related debt recovery credits brought into account under paragraph 5 above for the period in respect of those relationships by— 25
- (i) the member company, and
- (ii) every group member,
 exceeds
- (b) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by those companies. 30
- (9) Where there is for any group accounting period a surplus of related debt recovery credits in relation to the relevant creditor relationships, each of the related debt recovery credits falling to be brought into account by virtue of paragraph 5(2) above in respect of those relationships shall be reduced (but not below nil) by the appropriate amount. 35
- For the purposes of this sub-paragraph “the appropriate amount” is the amount found by apportioning between those related debt recovery credits, in proportion to their respective amounts, the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships. 40
- (10) In this paragraph, for any group accounting period the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships is— 45
- (a) the total amount by which the relevant net debits in respect of those relationships for any previous group accounting

- periods have been reduced by virtue of sub-paragraph (6) above; less
- (b) so much of that total amount as has been previously apportioned under sub-paragraph (9) above.
- (11) Any reference in this paragraph to a “relevant claim for group relief” is a reference to a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by the debtor consortium company. 5
- (12) Any relevant claim for group relief for a group accounting period shall be reduced by so much of the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships as does not exceed the total amount of the claim. 10
- Where there are two or more such claims for the same group accounting period which in total exceed that cumulative net amount, each of them shall be reduced by an amount found by apportioning that cumulative net amount between them in proportion to their respective amounts. 15
- (13) In this paragraph, for any group accounting period the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships is the total amount of the relevant net debits for those earlier periods in respect of those relationships, after any reductions falling to be made under this paragraph in the amounts of those relevant net debits. 20 25
- (14) If there is for any group accounting period –
- (a) a relevant claim for group relief (as reduced by virtue of sub-paragraph (12) above, where applicable), and
- (b) no relevant net debit in respect of the relevant creditor relationships, 30
- the claim (as so reduced) shall be carried forward and treated for the purposes of sub-paragraph (12) above as increasing any relevant claim for group relief made by the claimant company for its next accounting period (or, if there is no other relevant claim for group relief made by that company for that period, as the relevant claim for group relief by that company for that period). 35
- (15) Where –
- (a) the debtor consortium company has brought an amount into account by virtue of paragraph 5(3) above for an accounting period in relation to a debtor relationship, and 40
- (b) the corresponding creditor relationship is a relevant creditor relationship,
- an equal amount shall be treated for the purposes of this paragraph as not being a debit brought into account for that period under paragraph 5(1) in relation to the creditor relationship. 45
- (16) Where section 403C of the Taxes Act 1988 (amount of relief in consortium cases) applies, effect shall be given to that section before effect is given to this paragraph.

- (17) In this paragraph “group accounting period” means –
- (a) any accounting period of the member company beginning on or after 1st October 2001, or
 - (b) any accounting period of a group member which begins on or after that date and corresponds to such an accounting period of the member company, 5
- and any such accounting period of the member company and any such corresponding accounting periods of one or more group members shall be regarded for the purposes of this paragraph as being the same accounting period. 10
- (18) For the purposes of this paragraph an accounting period of a group member corresponds to an accounting period of the member company if –
- (a) the two accounting periods coincide;
 - (b) the accounting period of the member company includes more than half of the accounting period of the group member; or 15
 - (c) the accounting period of the member company includes part of the accounting period of the group member, but the remainder of that period does not fall within any accounting period of the member company. 20
- (19) In this paragraph –
- “consortium claim” means a claim for group relief made by virtue of section 402(3) of the Taxes Act 1988;
 - “consortium company” means a company falling within any of paragraphs (a) to (c) of section 402(3) of the Taxes Act 1988 (surrender of relief between members of consortia); 25
 - “cumulative net amount of relevant net debits” shall be construed in accordance with sub-paragraph (13); 30
 - “cumulative net sub-paragraph (6) reduction” shall be construed in accordance with sub-paragraph (10) above;
 - “debtor consortium company” shall be construed in accordance with sub-paragraph (3) above;
 - “group accounting period” shall be construed in accordance with sub-paragraphs (17) and (18) above; 35
 - “group member” shall be construed in accordance with sub-paragraph (2)(b) above;
 - “group relief” has the meaning given by section 402(1) of the Taxes Act 1988; 40
 - “holding company” means a company falling within section 402(3)(c) of the Taxes Act 1988;
 - “member”, in relation to a consortium, has the same meaning as in Chapter 4 of Part 10 of the Taxes Act 1988 (group relief); 45
 - “member company” shall be construed in accordance with sub-paragraph (2)(a) above;
 - “related debt recovery credit”, in relation to a group accounting period, means a credit falling to be brought into account for the purposes of this Chapter for that 50

	period by the member company or a group member by virtue of paragraph 5(2) above in connection with a bad debt owed by the debtor consortium company;	
	“relevant claim for group relief” shall be construed in accordance with sub-paragraph (11) above;	5
	“relevant creditor relationship” shall be construed in accordance with sub-paragraph (4) above;	
	“relevant net debit” shall be construed in accordance with sub-paragraph (5) above;	
	“subsidiary”, in relation to a company which is a holding company, means a company falling within section 402(3)(b) of the Taxes Act 1988 by reference to that holding company;	10
	“surplus of related debt recovery credits” shall be construed in accordance with sub-paragraph (9) above;	15
	“surrendering company” has the meaning given by section 402(1) of the Taxes Act 1988.	
(20)	Any reference in this paragraph to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).	20
(21)	Any reference in this paragraph to a company being owned by a consortium shall be construed in accordance with section 413(6) of the Taxes Act 1988.”.	
	<i>Bad debt etc where parties have a connection</i>	25
24	(1) Paragraph 6 of Schedule 9 is amended as follows.	
	(2) In sub-paragraph (2) (credits and debits to be computed subject to sub-paragraphs (3) to (6)) after “sub-paragraphs (3) to (6)” insert “and paragraphs 6A and 6B”.	
	(3) In sub-paragraph (3) (assumption that every amount will be paid in full to be applied, subject to any departure allowed by sub-paragraph (4)) after “sub-paragraph (4)” insert “or paragraph 6A or 6B”.	30
	<i>Bad debt etc: parties having connection and creditor company in insolvent liquidation etc</i>	
25	After paragraph 6 of Schedule 9 insert –	
	“ <i>Bad debt etc parties having connection and creditor in insolvent liquidation etc</i> ”	35
	6A (1) This paragraph applies in any case falling within paragraph 6(1) above where –	
	(a) the company which has the creditor relationship (“the creditor company”) has gone into insolvent liquidation;	
	(b) an administration order is in force in relation to that company under Part 2 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;	40
	(c) an appointment of a provisional liquidator is in force in relation to that company under section 135 of that Act or Article 115 of that Order; or	45

- (d) under the law of a country or territory outside the United Kingdom, an event has occurred, or circumstances exist, corresponding to any of those described in paragraphs (a) to (c) above.
- (2) Where this paragraph applies, a departure from the assumption that every amount payable under the relationship will be paid in full shall be allowed in relation to any amount accruing to the creditor company under the relationship – 5
- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at a time after the commencement of the winding up; 10
- (b) in a case falling within paragraph (b) of that sub-paragraph, at a time when the administration order is in force;
- (c) in a case falling within paragraph (c) of that sub-paragraph, at a time when the appointment of the provisional liquidator is in force; or 15
- (d) in a case falling within paragraph (d) of that sub-paragraph, at a time corresponding to that described in paragraph (a), (b) or (c) above (as the case may be). 20
- (3) For the purposes of this paragraph, a company goes into insolvent liquidation if it goes into liquidation, as defined in section 247(2) of the Insolvency Act 1986 or Article 6(2) of the Insolvency (Northern Ireland) Order 1989, at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.”. 25

Bad debt etc: companies becoming connected

26 After paragraph 6A of Schedule 9 insert –

“Bad debt etc: companies becoming connected

- 6B (1) Where – 30
- (a) paragraph 6 above applies in relation to a creditor relationship of a company (the “creditor company”) in the case of an accounting period, and
- (b) another company (the “debtor company”) stands in the position of a debtor as respects the money debt, 35
- a departure from the assumption mentioned in paragraph 6(3) above shall be allowed in accordance with sub-paragraphs (2) to (4) or (5) to (9) below.
- (2) A departure from the assumption mentioned in paragraph 6(3) above shall be allowed in the case of the creditor relationship if a departure has been allowed under paragraph 5(1) above in respect of the creditor relationship for a previous accounting period for which there was no connection (within the meaning of section 87 of this Act) between the creditor company and the debtor company. 40
- (3) A departure shall be allowed under sub-paragraph (2) above to the extent only that the debits brought into account by the creditor company for the accounting period in respect of the relationship 45

are not more than they would have been if it were assumed that the aggregate of the amounts payable in respect of the creditor relationship were equal to the pre-connection value of the asset representing the creditor relationship.

- (4) The “pre-connection value” of the asset representing the creditor relationship is the value of that asset as shown in the accounts of the creditor company at the end of the accounting period immediately preceding the first accounting period beginning on or after 1st October 2002 for which there is such a connection as is mentioned in sub-paragraph (2) above. 5 10
- (5) A departure from the assumption mentioned in paragraph 6(3) above shall be allowed for the accounting period in respect of the creditor relationship, if the conditions in sub-paragraph (6) below are satisfied.
- (6) The conditions are that— 15
- (a) the creditor company acquired its rights under the relationship by virtue of an arm’s length transaction;
 - (b) for the accounting period in which it acquired those rights, there was no connection (determined in accordance with sub-paragraph (8) below) between the creditor company and the person from whom it acquired the asset; and 20
 - (c) there had been no such connection between the creditor company and the debtor company at any time in the period which—
 - (i) begins 4 years before the date on which the company acquired those rights; and 25
 - (ii) ends twelve months before that date.
- (7) A departure shall be allowed under sub-paragraph (5) above to the extent only that the debits brought into account by the creditor company for the accounting period in respect of the relationship are not more than they would have been if— 30
- (a) it were assumed that the aggregate of the amounts payable in respect of the relationship were equal to the price paid by the company to acquire its rights; and
 - (b) no departure were allowed from the assumption in paragraph (a) above. 35
- (8) For the purposes of sub-paragraph (6) above, there is a connection between a company and another person at any time if at that time—
- (a) the other person is a company and one of the companies has control of the other, 40
 - (b) the other person is a company and both companies are under the control of the same person, or
 - (c) the company is a close company and the other person is a participator in that company or the associate of a person who is such a participator, 45
- and there is a connection between a company and another person for an accounting period if there is a connection (within paragraphs (a) to (c) above) between the company and the person at any time in that accounting period. 50

- (9) For the purposes of sub-paragraph (8) above –
- (a) subsections (2) to (6) of section 416 of the Taxes Act 1988 (meaning of control) shall apply as they apply for the purposes of Part 11 of that Act;
 - (b) subject to paragraph (c) below, “participator” and “associate” have the meaning given for the purposes of that Part by section 417 of that Act; 5
 - (c) a person shall not be regarded as a participator in relation to a company by reason only that he is a loan creditor of the company.”. 10

Bad debt etc: departure not permitted by paragraph 6: subsequent cessation of connection

27 After paragraph 6B of Schedule 9 insert –

“Bad debt etc: departure not permitted by paragraph 6: cessation of connection

- 6C (1) Where, in the case of a creditor relationship of a company, –
- (a) a departure that would otherwise have been allowed under paragraph 5(1) above in respect of an amount is or was, by virtue of paragraph 6 above, not allowed in the case of an accounting period; and 15
 - (b) there is a subsequent accounting period for which there is, within the meaning of section 87 of this Act, no connection between the company and any person standing in the position of a debtor as respects the debt, 20
- sub-paragraphs (2) and (3) below shall apply.
- (2) Where this sub-paragraph applies, no credit shall be required to be brought into account by virtue of paragraph 5(2) above in respect of an amount – 25
- (a) for the first accounting period falling within sub-paragraph (1)(b) above, or
 - (b) for any subsequent such accounting period,
- to the extent that the amount in question corresponds to the amount mentioned in sub-paragraph (1)(a) above. 30
- (3) Where this sub-paragraph applies, no debit shall be brought into account in respect of an amount –
- (a) for the first accounting period falling within sub-paragraph (1)(b) above, or 35
 - (b) for any subsequent such accounting period,
- to the extent that the amount in question represents the amount mentioned in sub-paragraph (1)(a) above.”.

Imported losses etc.

- 28 In paragraph 10 of Schedule 9 at the end insert – 40
- “(5) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”. 45

Continuity of treatment: groups etc

- 29 (1) Paragraph 12 of Schedule 9 is amended as follows.
- (2) After sub-paragraph (2) insert –
- “(2A) This paragraph does not apply where the transferor company uses an authorised mark to market basis of accounting as respects the loan relationship, but in any such case –
- (a) the amount to be brought into account by the transferee company in respect of the transaction, the result of the series of transactions, or the transfer must be the fair value of the asset, or of the rights under or interest in the asset, as at the date on which the transferee company becomes party to the loan relationship; and
- (b) paragraph (b) of sub-paragraph (2) above shall have effect for the purposes of section 90 of this Act (changes of accounting method).”.

Loan relationships for unallowable purposes

- 30 In paragraph 13 of Schedule 9, after sub-paragraph (1) insert –
- “(1A) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”.

Debits and credits treated as relating to capital expenditure

- 31 (1) Paragraph 14 of Schedule 9 is amended as follows.
- (2) In sub-paragraphs (1) and (2), for “normal accountancy practice”, in each place where occurring, substitute “generally accepted accounting practice”.
- (3) After sub-paragraph (2) add –
- “(3) No debit may be brought into account by virtue of this paragraph if it is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Schedule 29 to the Finance Act 2002.”.

Repo transactions and stock lending

- 32 (1) Paragraph 15 is amended as follows.
- (2) After sub-paragraph (4) (equivalent rights) insert –
- “(4A) In consequence of sub-paragraph (1) above –
- (a) the person transferring the rights mentioned in sub-paragraph (3)(a) above does not, as a result of the transfer, fall to be regarded for the purposes of this Chapter as ceasing to be party to the loan relationship; and
- (b) the person to whom those rights are transferred does not, as a result of the transfer, fall to be regarded for the

purposes of this Chapter as being party to the loan relationship.”.

- (3) After sub-paragraph (6) (which provides that the paragraph is without prejudice to section 730A(2) and (6)) insert –

“(6A) Nothing in this paragraph affects section 807A(2A) of the Taxes Act 1988 (double taxation relief in the case of repo or stock lending agreement).”.

5

Discounted securities where companies have a connection

- 33 (1) Paragraph 17 of Schedule 9 is amended as follows.

- (2) In sub-paragraph (5) (meaning of “connection” between companies) in paragraph (a) (one of the companies has had control of the other in the accounting period or the preceding two years) –
- 10

(a) omit “, or in the period of two years before the beginning of that period,”; and

(b) after “control of” insert “, or a major interest in,”.

15

- (3) In paragraph (b) of that sub-paragraph (both companies under control of same person in that period or those two years) omit “, or in those two years,”.

- (4) For sub-paragraph (9) (meaning of “control”) substitute –

“(9) For the purposes of this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).

20

(10) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”.

Discounted securities of close companies 25

- 34 (1) Paragraph 18 of Schedule 9 is amended as follows.

- (2) In sub-paragraph (1) (accounting periods to which the paragraph applies) –

(a) after “any accounting period” insert “(“the relevant period”); and

(b) in paragraph (a), after “a close company” insert “(“the issuing company”);”.

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- (3) In paragraph (b) of that sub-paragraph, for the words preceding sub-paragraph (i) (which relate to beneficial ownership at any time in or before the accounting period in question) substitute –

“(b) at any time in that period there is a person who stands in the position of a creditor as respects that security and who at that time is –”.

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- (4) After sub-paragraph (1) insert –

“(1A) But for any such accounting period this paragraph shall not apply in relation to that debtor relationship if –

(a) at all times in the period when there is such a person as is described in sub-paragraph (1)(b) above, that person is a company;

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(b) for the period there is no connection between that company and the issuing company; and

- (c) credits representing the full amount of the discount that is referable to the period are brought into account for the purposes of this Chapter in respect of the corresponding creditor relationship.”.
- (5) For sub-paragraph (2) (debits not to be brought into account by the issuing company for any accounting period before that in which the security is redeemed) substitute— 5
- “(2) The debits falling in the case of the issuing company to be brought into account for the purposes of this Chapter in respect of the loan relationship shall be adjusted so that every debit relating to the amount of the discount that is referable to the relevant period (“the relevant debits”) is brought into account for the accounting period in which the security is redeemed, instead of for the relevant period. 10
- This subsection does not apply where the relevant period is the accounting period in which the security is redeemed. 15
- (2A) Where at some (but not all) times in the relevant period there is such a person as is described in sub-paragraph (1)(b) above—
- (a) part only of the relevant debits shall be brought into account in accordance with sub-paragraph (2) above; and 20
- (b) that part is the part which bears to the whole of the relevant debits the proportion which the part of the relevant period for which there is such a person bears to the whole of that period.”.
- (6) After sub-paragraph (2A) insert— 25
- “(2B) References in this paragraph to the amount of the discount that is referable to an accounting period are references to the amount relating to the difference between—
- (a) the issue price of the security, and
- (b) the amount payable on redemption, 30
- which (apart from sub-paragraphs (2) and (2A) above) would for that accounting period be brought into account for the purposes of this Chapter in the case of the issuing company.”.
- (7) After sub-paragraph (2B) insert—
- “(2C) Any reference in this paragraph to a person who stands in the position of a creditor as respects a relevant discounted security includes a reference to a person who indirectly stands in that position by reference to a series of relevant discounted securities. 35
- (2D) Where this paragraph applies by virtue of sub-paragraph (2C) above, the reference to the corresponding creditor relationship in sub-paragraph (1A)(c) above is a reference to the creditor relationship of the person who indirectly stands in the position of a creditor as respects the relevant discounted security.”. 40
- (8) After sub-paragraph (3) insert—
- “(3A) For the purposes of this paragraph there is a connection between one company and another for an accounting period if— 45
- (a) there is a time in that period when one of the companies has had control of the other, or

-
- (b) there is a time in that period when both the companies have been under the control of the same person.
- (3B) In this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).”.
- (9) In sub-paragraph (4) (definitions) omit the definition of “control”. 5
- (10) In that sub-paragraph, in the definition of “participator” –
- (a) after ““participator”” insert “, in relation to a company,”; and
- (b) for the words from “by virtue only” to the end of the definition substitute “by reason only that he is a loan creditor of the company.”.
- Partnerships involving companies* 10
- 35 In Schedule 9, after paragraph 18 insert –
- “Partnerships involving companies*
- 19 (1) This paragraph applies where –
- (a) a trade, profession or business is carried on by persons in partnership (“the firm”); 15
- (b) any of those persons is a company (a “company partner”); and
- (c) a money debt is owed by or to the firm.
- (2) In any such case –
- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no debits or credits shall be brought into account under this Chapter in relation to the money debt or any loan relationship that would fall to be treated for the purposes of the computation as arising from the money debt; but 20
- (b) debits and credits shall be brought into account under this Chapter in relation to the money debt (and any loan relationship treated as arising from it) in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) above are satisfied. 25
- (3) The debits and credits to be brought into account as mentioned in sub-paragraph (2)(b) above shall be determined separately in the case of each company partner. 35
- (4) For the purpose of determining those debits and credits in the case of any particular company partner –
- (a) the money debt owed by or to the firm shall be treated as if it were instead owed by or, as the case may be, to that company partner, for the purposes of the trade, profession or business which that company partner carries on, 40
- (b) the money debt shall continue to be regarded as arising from a transaction for the lending of money if that is in fact the case (so that the company partner is treated as having a loan relationship), and 45

- (c) anything done by or in relation to the firm in connection with the money debt shall be treated as done by or in relation to the company partner,
and debits and credits (the “gross debits and credits”) shall be determined accordingly. 5
- (5) The debits and credits to be brought into account under this Chapter pursuant to sub-paragraph (2)(b) above in the case of any particular company partner shall be that company partner’s appropriate share of the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner. 10
- (6) For the purposes of sub-paragraph (5) above, the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if –
- (a) the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner fell to be apportioned between the partners; and 15
- (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section. 20
- (7) If, in a case where the money debt owed by or to the firm arises from a transaction for the lending of money, there is a time in an accounting period of any company at which – 25
- (a) a person who is a company partner stands in relation to the debt in the position of a creditor (if it is owed by the firm) or a debtor (if it is owed to the firm) and accordingly has a creditor relationship or debtor relationship (as the case may be), 30
- (b) that company partner, whether alone or taken together with one or more other company partners connected with it, controls the partnership, and
- (c) that or any other company partner falls to be treated in accordance with sub-paragraph (4) above as if it had the debtor relationship or creditor relationship that corresponds to the creditor relationship or debtor relationship mentioned in paragraph (a) above, 35
- sub-paragraph (8) below shall apply with respect to that accounting period, if it is an accounting period of a company partner mentioned in paragraph (a) or (c) above. 40
- (8) Where this sub-paragraph applies, there shall be taken for the purposes of this Chapter to be a connection by virtue of section 87(3)(a) of this Act for the accounting period of the company partner mentioned in paragraph (a) of sub-paragraph (7) above, between that company partner and each company partner (including that company partner) that falls within paragraph (c) of that sub-paragraph. 45
- (9) For the purposes of sub-paragraph (7) above, one company partner is connected with another at any time in an accounting 50

- period if at that or any other time in the accounting period one controls the other or both are under the control of the same person.
- (10) The only accounting method authorised for use by a company partner in determining the debits and credits to be brought into account under this paragraph is an authorised accruals basis of accounting, but this sub-paragraph is subject to sub-paragraph (11) below. 5
- (11) Where the company partner uses an authorised mark to market basis of accounting in relation to its interest in the partnership, the only accounting method authorised for use in determining the debits and credits to be brought into account under this paragraph by that company partner is an authorised mark to market basis of accounting, unless a provision of this Chapter requires the use of an authorised accruals basis of accounting. 10
- (12) Subsection (3) of section 84A of this Act does not apply in relation to a company partner as respects the debits and credits to be brought into account by virtue of this paragraph except to the extent that, in the accounts of the firm, exchange gains and losses are carried to or sustained by a reserve in a manner corresponding to that described in that section in relation to a company. 15
20
- (13) Where the firm holds a relevant discounted security, within the meaning of paragraph 17 above, each of the partners shall be treated for the purposes of this paragraph as beneficially entitled to that share of the security to which he would be entitled if all the partners were companies and such an apportionment as is described in sub-paragraph (6)(b) above were made. 25
- (14) In this paragraph “control” –
- (a) in relation to a company, has the same meaning as in section 87 of this Act (see section 87A); and
- (b) in relation to a partnership, has the meaning given by section 840 of the Taxes Act 1988.”. 30

Interpretation of Schedule 9: “major interest”

36 In Schedule 9, after paragraph 19 insert –

“Interpretation of references to major interests

- 20 (1) For the purposes of any provision which applies this paragraph, the cases where a company (“company A”) has a major interest in another company (“company B”) at any time are those cases where at that time – 35
- (a) company A and one other person, taken together, have control of company B; and 40
- (b) company A and the other person each have interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which company A and the other person fall to be taken as having control of company B; and 45
- (c) company A, or a company connected with it, and the other person, or, if that person is a company, a company

- connected with it, both satisfy the first condition, or both satisfy the second condition, in sub-paragraph (2) below.
- (2) A person –
- (a) satisfies the first condition if he stands in the position of a creditor in relation to a loan relationship as respects which company B stands in the position of a debtor; and 5
 - (b) satisfies the second condition if he stands in the position of a debtor in relation to a loan relationship as respects which company B stands in the position of a creditor.
- (3) The reference in sub-paragraph (1)(b) above to interests, rights and powers does not include interests, rights or powers arising from shares held by a company if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company. 10
- (4) For the purposes of sub-paragraph (1) above, any question – 15
- (a) whether two persons taken together have control of a company at any time, or
 - (b) whether a person has at any time interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of a company, 20
- shall be determined after attributing to any person which is a company all the interests, rights and powers of any company connected with it.
- (5) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this paragraph, as respects any time in an accounting period of the partnership, as if – 25
- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and 30
 - (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section, 35
- but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000. 40
- (6) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question – 45
- (a) whether a company has a major interest (within the meaning of this paragraph) in another company for an accounting period in the case of a loan relationship, or
 - (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of a company 50

<p>having, or (as the case may be) not having, such a major interest in another company, shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt. The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.</p> <p>(7) For the purposes of sub-paragraph (6) above, a partner’s “appropriate share” is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section.</p> <p>(8) For the purposes of this paragraph, a company is connected with another company if one controls the other or both are controlled by the same company.</p> <p>(9) For the purposes of this paragraph, “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).</p> <p>(10) Where two or more persons taken together have the power mentioned in subsection (1) of section 87A of this Act (as read with the other provisions of that section) they shall be taken for the purposes of sub-paragraph (1)(a) above to have control of the company in question.”</p> <p><i>Investment trusts and venture capital trusts: treatment of capital reserves</i></p> <p>37 (1) Schedule 10 (collective investment schemes) is amended as follows. (2) For paragraph 1 substitute— <i>“Investment trusts and venture capital trusts: capital reserves</i> 1A (1) Where any profits, gains or losses arising to an investment trust from a creditor relationship for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for that accounting period, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act. (2) Where any profits, gains or losses arising to a venture capital trust from a creditor relationship for an accounting period— (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or</p>	<p>5 10 15 20 25 30 35 40 45</p>
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- (b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act. 5
- (3) For the purposes of this paragraph, the Statement of Recommended Practice used for an accounting period is –
- (a) in relation to an accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or 10
- (b) in relation to any accounting period for which it is permitted to be used, any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.”. 15

Authorised unit trusts and open-ended investment companies

- 38 (1) Schedule 10 (collective investment schemes) is amended as follows. 20
- (2) For paragraph 2 (which makes special provision in relation to authorised unit trusts and is applied to open-ended investment companies by regulations under section 152 of the Finance Act 1995 (c. 4)) and the heading immediately preceding it substitute –
- “Authorised unit trusts”* 25
- “2A (1) Where any profits, gains or losses arising to an authorised unit trust from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act. 30
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under –
- (a) the heading “net gains/losses on investments during the period”, or 35
- (b) the heading “other gains/losses”,
in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period. 40
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means – 45

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|-----|---|----|
| (a) | in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised; or | 5 |
| (b) | in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to authorised unit trust schemes, as from time to time modified, amended or revised. | 10 |
| (5) | The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice. | 15 |
| (6) | The power to make an order under this paragraph includes power – | |
| (a) | to make different provision for different cases; and | |
| (b) | to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment). | 20 |

Open-ended investment companies

- | | | |
|--------|---|----------|
| 2B (1) | Where any profits, gains or losses arising to an open-ended investment company from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act. | 25
30 |
| (2) | For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under – | |
| (a) | the heading “net gains/losses on investments during the period”, or | 35 |
| (b) | the heading “other gains/losses”, | |
| | in the statement of total return for the accounting period. | |
| (3) | For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period. | 40 |
| (4) | For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means – | 45 |
| (a) | in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies | |

- issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised;
or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to open-ended investment companies, as from time to time modified, amended or revised. 5
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice. 10
- (6) The power to make an order under this paragraph includes power –
- (a) to make different provision for different cases; and 15
- (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).” 20

Distributing offshore funds

39 For paragraph 3 of that Schedule substitute –

- “3 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining what, for any period, would be the total profits of an offshore fund are to include the assumptions in subparagraphs (2) and (3) below. 25
- (2) The first assumption is that the provisions of this Chapter so far as they relate to the creditor relationships of a company do not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund. 30
- (3) The second assumption is that for the purposes of corporation tax the profits and gains, and losses, that are to be taken to arise from the creditor relationships of an offshore fund are to be computed – 35
- (a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and
- (b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment. 40
- (4) In this paragraph “unauthorised unit trust” means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988.” 45

Adjustments in the case of chargeable assets etc

- 40 (1) In Schedule 15 (loan relationships: savings and transitional provisions) paragraph 11 is amended as follows.
- (2) After sub-paragraph (2) insert –
- “(2A) If, in a case where the continuing loan relationship is a creditor relationship, – 5
- (a) the company acquired its rights under the relationship on or before 31st March 1996 by virtue of an arm’s length transaction,
- (b) for the accounting period in which it acquired those rights – 10
- (i) there was no connection (as defined in subsection (2C) below) between the company and the person from whom the company acquired the asset, but
- (ii) there was such a connection between the company and a company standing in the position of a debtor as respects the money debt, and 15
- (c) there had been no such connection between the companies mentioned in paragraph (b)(ii) above at any time in the period which – 20
- (i) begins 4 years before the date on which the company acquired those rights, and
- (ii) ends twelve months before that date,
- this paragraph shall have effect as if the amount mentioned in sub-paragraph (2)(b) above were an amount equal to the greater of the amounts mentioned in sub-paragraph (2B) below. 25
- (2B) Those amounts are –
- (a) the fair value of the rights at the time when the company ceases to be a party to the loan relationship; and
- (b) the fair value of the rights on 1st April 1996. 30
- (2C) For the purposes of sub-paragraph (2A) above there is a connection between a company and another person at any time if at that time –
- (a) the other person is a company and one of the companies has control of the other, 35
- (b) the other person is a company and both companies are under the control of the same person, or
- (c) the company is a close company and the other person is a participator in that company or the associate of a person who is such a participator, 40
- and there is a connection between a company and another person for an accounting period if there is a connection (within paragraphs (a) to (c) above) between the company and the person at any time in that accounting period.
- (2D) For the purposes of sub-paragraph (2C) above – 45
- (a) subsections (2) to (6) of section 416 of the Taxes Act 1988 (meaning of control) shall apply as they apply for the purposes of Part 11 of that Act;

- (b) subject to paragraph (c) below, “participator” and “associate” have the meaning given for the purposes of that Part by section 417 of that Act;
- (c) a person shall not be regarded as a participator in relation to a company by reason only that he is a loan creditor of the company.”. 5

Reduction of paragraph 11 credit where s.251(4) of 1992 Act prevents paragraph 8 loss

- 41 In Schedule 15, after paragraph 11 (other adjustments in the case of chargeable assets etc) insert—

“Reduction of para. 11 credit where s.251(4) of 1992 Act prevents para. 8 loss 10

11A (1) This paragraph applies where, in the case of any asset representing in whole or in part a loan relationship of a company, an amount representing a deemed allowable loss would (apart from this paragraph) fall or have fallen to be brought into account in accordance with paragraph 8(3) above for an accounting period (whenever beginning or ending), but for section 251(4) of the 1992 Act (no allowable loss on disposal of debt acquired from connected person). 15

(2) Where this paragraph applies, the amount of any credit falling within sub-paragraph (3) below shall be treated for the purposes of this Chapter as reduced (but not below nil) by the amount described in sub-paragraph (1) above. 20

(3) A credit falls within this sub-paragraph if (apart from this paragraph)—

(a) the credit falls to be given by virtue of paragraph 11(3)(a) above for an accounting period beginning on or after 1st October 2002; and 25

(b) the loan relationship mentioned in paragraph 11(1)(a) above in the case of the credit is the same loan relationship as the one mentioned in sub-paragraph (1) above.”. 30

PART 2

AMENDMENTS OF OTHER ENACTMENTS

The Taxes Act 1988

Introductory

- 42 The Taxes Act 1988 is amended as follows. 35

Incidental costs of obtaining loan finance

- 43 In section 77(2)(a) (meaning of “qualifying loan” etc) omit sub-paragraph (ii) (interest deductible under section 338 against total profits).

Group relief

- 44 In section 403ZC (amounts eligible for group relief: non-trading deficit on loan relationships) omit subsection (2) (which refers to a claim under section 83(2) of the Finance Act 1996 (c. 8)).

Apportionment of income and gains 5

- 45 (1) Section 432A is amended as follows.
- (2) In subsection (9A)(a) (meaning of “net value”) for “money debt” substitute “loan relationship”.
- (3) In subsection (9B) (definitions) –
- (a) in paragraph (b) of the definition of “investment reserve” for “money debt” substitute “loan relationship”; and
- (b) omit the definition of “money debt”. 10

Building society shares: regulations for deduction of tax

- 46 (1) Section 477A(3) (where regulations apply for any year of assessment, dividends or interest to be dealt with for the purposes of corporation tax as there described) is amended as follows. 15
- (2) In paragraph (a) (liability to pay to be treated as a liability arising under a loan relationship) at the beginning insert “to the extent that it would not otherwise fall to be so regarded,”.
- (3) In paragraph (aa) (dividends or interest payable to company to be treated as payable in pursuance of right under loan relationship) after “payable to a company,” insert “then, to the extent that they would not otherwise fall to be so regarded,”. 20

Building society shares: incidental costs of issuing qualifying shares

- 47 In section 477B, after subsection (1) (which allows deduction of such costs) insert – 25
- “(1A) A deduction shall not be allowed by virtue of subsection (1) above to the extent that the costs in question fall to be brought into account as debits for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships).” 30

European Economic Interest Groupings

- 48 (1) Section 510A is amended as follows.
- (2) In paragraph (b) of subsection (3) (charging tax in respect of gains) for “gains” substitute “chargeable gains”.
- (3) After that paragraph add “; 35
 but paragraph (a) above is subject to subsection (6A) below.”.
- (4) After subsection (6) (trade or profession carried on by grouping treated for tax on income and gains as carried on by a partnership) insert –
- “(6A) Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) shall have effect in relation to a grouping as it has effect in relation to 40

a partnership (see in particular section 87A of, and paragraphs 19 and 20 of Schedule 9 to, that Act).

Funding bonds issued in respect of interest on certain debts

49 In section 582, after subsection (3) insert –

“(3A) Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) has effect subject to and in accordance with this section, notwithstanding anything in section 80(5) of that Act (matters to be brought into account in the case of loan relationships only under Chapter 2 of Part 4 of that Act).”.

Transfers of income arising from securities 10

50 In section 730, after subsection (2) insert –

“(2A) This section does not have effect for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships).”.

Treatment of price differential on sale and repurchase of securities

51 (1) Section 730A is amended as follows. 15

(2) After subsection (5) insert –

“(5A) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where –
(a) the circumstances are as set out in subsection (1) above; and
(b) interest on a deemed loan is deemed by virtue of subsection (2) above to be paid by or to the company; 20

and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly.”.

(3) For subsection (6) (application of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in relation to deemed interest) substitute – 25

“(6) Where a company has a relationship to which this section applies –

(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall, as respects that company, have effect in relation to the interest deemed by virtue of subsection (2) above to be paid or received by the company under that relationship as it would have effect it were interest under a loan relationship to which the company is a party; and 30

(b) the debits and credits falling to be brought into account for the purposes of that Chapter so far as they relate to the deemed interest shall be those given by the use in relation to the deemed interest of an authorised accruals basis of accounting; and 35

(c) the only debits or credits to be brought into account for the purposes of that Chapter by virtue of this subsection in respect of a relationship are those relating to that deemed interest, 40

and, subject to paragraphs (b) and (c) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.”.

(4) After subsection (6A) (trading or non-trading debits or credits) insert –

“(6B) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) as being party to the relationship for the purposes of a trade carried on by the company.”.

Restriction of relief for payments of interest

52 (1) Section 787 is amended as follows.

(2) After subsection (1) insert –

“(1A) This section has effect in relation to Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) but taking the reference in subsection (1) above to giving relief to any person in respect of any payment of interest as including a reference to the bringing into account by any person in accordance with that Chapter of any debit in respect of interest (whether a payment or not); and other references in this section to relief shall be construed accordingly.”.

(3) For subsection (3) (determination of question as to benefit that might be expected to accrue in a case where the relief is claimed by virtue of section 83(2)(b) of the Finance Act 1996) substitute –

“(3) Where the relief is claimed by virtue of section 403 –

(a) in respect of a deficit to which section 83 of the Finance Act 1996 applies (non-trading deficit on loan relationships), or

(b) in respect of trading losses, in a case where in computing those losses debits in respect of loan relationships are treated under section 82(2)(b) of that Act as expenses of the trade which are deductible in computing the profits of the trade,

any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.”.

Limits on credit: corporation tax

53 In section 797, in subsection (3B) (amounts that must be allocated to trading profits) in paragraph (b) (claims under section 83(2)(d) of the Finance Act 1996) for “a claim under subsection (2)(d) of” substitute “subsection (3A) of”.

Foreign tax on items giving rise to a non-trading credit

54 (1) Section 797A is amended as follows. 40

(2) In subsection (5) (which specifies certain amounts under section 83 of the Finance Act 1996 which are to be aggregated for the purposes of subsection (4)) –

(a) in paragraph (a) –

- (i) for “(2)(b), (c) or (d)” substitute “(2)(c)”; and
 - (ii) for the words from “(group relief” to “deficits)” substitute “(deficit carried back and set against profits)”;
 - (b) after paragraph (a) insert –
 - “(aa) so much of any non-trading deficit for that period as is surrendered as group relief by virtue of section 403 of the Taxes Act 1988; and”;
 - (c) in paragraph (b), for “(3)” substitute “(3A)”.
- (3) In subsection (6), for “in pursuance of a claim under section 83(2)(d)” substitute “under section 83(3A)”.

Investment trusts

- 55 (1) Section 842 is amended as follows.
- (2) In paragraph (a) of subsection (1) (income must be wholly or mainly eligible investment income) –
 - (a) after “the company’s income” insert “(as determined in accordance with subsection (1AB) below)”;
 - (b) after “eligible investment income” insert “(as so determined)”.
 - (3) In paragraph (e) of subsection (1) (company must not retain more than 15% of eligible investment income) –
 - (a) for “more than” substitute “an amount which is greater than”;
 - (b) after “eligible investment income” insert “(determined in accordance with subsection (1AB) below)”.
 - (4) After subsection (1AA) insert –
 - “(1AB) In determining for the purposes of paragraph (a) or (e) of subsection (1) above (and accordingly of subsection (2A)(b) below) –
 - (a) the amount of a company’s income, or
 - (b) the amount of income which a company derives from shares or securities,the amounts to be brought into account under Chapter 2 of Part 4 of the Finance Act 1996 in respect of the company’s loan relationships shall be determined without reference to any debtor relationships of the company.”.

Venture capital trusts

- 56 (1) Section 842AA is amended as follows.
- (2) In paragraph (f) of subsection (2) (company must not retain more than 15% of income derived from shares or securities) for “more than” substitute “an amount which is greater than”.
 - (3) In section 842AA(11) (which applies provisions of section 842 to provisions of section 842AA) –
 - (a) before paragraph (a) insert the following paragraph –
 - “(za) subsection (1AB) of that section shall apply in relation to subsection (2)(a) above as it applies in relation to subsection (1)(a) of that section;”;

- (b) in paragraph (b) (which applies subsections (2A) to (2C) of section 842 to subsection (2)(f) of section 842AA) after “subsections” insert “(1AB) and”.

Change in ownership of investment company

- 57 (1) Schedule 28A is amended as follows. 5
- (2) In paragraph 6(dc) (amounts in issue for the purposes of section 768B: non-trading deficit carried forward under section 83(3) of the Finance Act 1996 (c. 8)) for “83(3)” substitute “83(3A)”.
- (3) In paragraph 7(1)(d) (apportionment for section 768B in case of debits falling to be brought into account otherwise than on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and” 10
- “(iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (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),” 15
- (4) In paragraph 7(1)(e) (apportionment for section 768B in case of debits falling to be brought into account on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and” 20
- “(iv) so falls to be brought into account with such an adjustment as is mentioned in paragraph (d)(iv) above,” 25
- (5) Omit paragraph 7(2) (which relates to charges consisting of interest and which accordingly has no further application).
- (6) In paragraph 11(1) (debts that fall within paragraph 11) – 30
- (a) for the word “and” immediately preceding paragraph (c) substitute the following paragraph –
- “(bb) so falls to be brought into account with an adjustment under paragraph 17 or 18 of that Schedule (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); and”; and 35
- (b) in paragraph (c) (accounting period in which the debit would have been brought into account, apart from the sub-paragraph mentioned in paragraph (b)) for “apart from that sub-paragraph” substitute “apart from paragraphs 2(2), 17 and 18 of that Schedule,” 40
- (7) In paragraph 13(1)(ec) (amounts in issue for the purposes of section 768C: non-trading deficit carried forward under section 83(3) of the Finance Act 1996) for “83(3)” substitute “83(3A)”.
- (8) In paragraph 16(1)(d) (manner of apportionment in case of debits falling to be brought into account otherwise than on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and” 45

- (iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (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),”.
- (9) 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) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and
- (iv) so falls to be brought into account with such an adjustment as is mentioned in paragraph (d)(iv) above,”.
- (10) Omit paragraph 16(2) (which relates to charges consisting of interest and which accordingly has no further application).

The Finance Act 1988

Commercial woodlands

- 58 (1) Schedule 6 to the Finance Act 1988 (c. 39) is amended as follows.
- (2) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) in paragraph 3 (abolition of Schedule D election etc) omit –
- (a) sub-paragraphs (3)(a), (4)(a) and (5)(a) and (b);
- (b) in sub-paragraph (5), in the words following paragraph (c), the word “group”; and
- (c) sub-paragraph (6).”.

The Taxation of Chargeable Gains Act 1992 25

Interest charged to capital

- 59 (1) Section 40 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (3) add –
- “(4) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) this section does not have effect in relation to interest referable to an accounting period ending on or after 1st April 1996.”.

PART 3

TRANSITIONAL PROVISIONS

Interpretation 35

- 60 In this Part of this Schedule –
- “new accounting period” means an accounting period beginning on or after 1st October 2002;
- “old accounting period” means an accounting period beginning before 1st October 2002.

Discounted securities where companies have a connection

- 61 Where—
- (a) in consequence of the amendments made by paragraph 33 above, the condition in sub-paragraph (1)(c) of paragraph 17 of Schedule 9 to the Finance Act 1996 (c. 8) (connection between issuing company and other company) is satisfied as respects a new accounting period of the issuing company, but 5
 - (b) that condition would not have been satisfied had the accounting period been an old accounting period, and
 - (c) the debtor relationship in question is a debtor relationship of the issuing company on the first day of its first new accounting period, 10
that paragraph shall not have effect in relation to that debtor relationship.

Discounted securities of close companies

- 62 (1) This paragraph applies in any case where—
- (a) by virtue of paragraph 18 of Schedule 9 to the Finance Act 1996 an amount (“the deferred amount”) is not brought into account by a company for the purposes of Chapter 2 of Part 4 of that Act in respect of a debtor relationship for an old accounting period; and 15
 - (b) the relevant discounted security concerned has not been redeemed before the beginning of the company’s first new accounting period. 20
- (2) As regards any new accounting period, paragraph 18(2) of that Schedule shall be taken to have had effect in relation to the old accounting period as if, instead of preventing the bringing of amounts into account for any accounting period before that in which the security is redeemed, it had provided for the deferred amount to be brought into account for the accounting period in which the security is redeemed instead of for the old accounting period. 25

Authorised unit trusts and open-ended investment companies

- 63 (1) Where—
- (a) an amount of interest under a creditor relationship of an authorised unit trust or open-ended investment company is paid to the trust or company, 30
 - (b) the amount paid is not interest which, in the case of the trust or company, was brought into account for the purposes of corporation tax for an old accounting period, 35
 - (c) the amount paid is not interest in relation to which any credit falls (apart from under this sub-paragraph) to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) in the case of the trust or company, and
 - (d) the amount paid is not an amount of interest which, in relation to a transfer before the first new day, was unrealised interest within the meaning of section 716 of the Taxes Act 1988, 40
- credits shall be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in the case of the trust or company as if the amount paid were interest accruing, and becoming due and payable, at the time when it is paid. 45

-
- (2) Where, apart from Chapter 2 of Part 4 of the Finance Act 1996 (c. 8), any authorised unit trust or open-ended investment company would be treated under subsection (2) or (4) of section 714 of the Taxes Act 1988 (treatment of deemed sums and reliefs under accrued income scheme) –
- (a) as receiving any amount at the end of a period beginning before, and ending during, the trust or company’s first new accounting period, or 5
 - (b) as entitled to any allowance or any amount in such a period, that amount shall be brought into account as a non-trading credit or, as the case may be, a non-trading debit given for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 for the trust or company’s first new accounting period. 10
- (3) Where –
- (a) an authorised unit trust or open-ended investment company holds a relevant discounted security on the last old day, 15
 - (b) the security was not transferred or redeemed on that day, and
 - (c) there is an amount which, if the trust or company had made a transfer of that security on that day, by selling it for its adjusted closing value, –
 - (i) would have been charged under paragraph 1 of Schedule 13 to the Finance Act 1996 to tax under Case III or IV of Schedule D, or 20
 - (ii) would have been eligible for relief from tax on a claim for the purposes of paragraph 2 of that Schedule, 25that amount shall be brought into account as a non-trading credit, or (as the case may be) a non-trading debit, given for the purposes of Chapter 2 of Part 4 of that Act for the accounting period mentioned in sub-paragraph (4) below.
- (4) That period is the accounting period in which falls whichever is the earliest of the following, that is to say, – 30
- (a) the first day that falls after the last old day and is a day on which, under the terms on which the security was issued, the holder of the security is entitled to require it to be redeemed;
 - (b) the day on which the security is redeemed; or
 - (c) the day on which the trust or company makes a disposal of the security. 35
- (5) For the purposes of sub-paragraph (3)(c), the “adjusted closing value” of a relevant discounted security held by the trust or company on the last old day is the amount which for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 is the opening value, as at the first new day, of the trust or company’s rights and liabilities under the relationship represented by that security. 40
- (6) Sub-paragraph (7) of paragraph 5 of Schedule 15 to the Finance Act 1996 (determination of opening value where accruals basis of accounting is used) applies for the purposes of sub-paragraph (5) as it applies for the purposes of that paragraph, but – 45
- (a) taking the reference to 1st April 1996 as a reference to the first new day; and

- (b) applying paragraph 4 of that Schedule (determination of amounts treated as accruing on or after 1st April 1996) for these purposes with the same modification.
- (7) In sub-paragraphs (3) to (6) –
- “redeem” shall be construed in accordance with Schedule 13 to the Finance Act 1996 (c. 8) (discounted securities: income tax provisions); 5
 - “relevant discounted security” has the same meaning as in that Schedule;
 - “transfer” has the same meaning as in that Schedule. 10
- (8) In this paragraph –
- “creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996;
 - “the first new day” means the first day of the trust or company’s first new accounting period; 15
 - “the last old day” means the last day of the trust or company’s last old accounting period;
 - “the trust or company” means the authorised unit trust or open-ended investment company in question.

SCHEDULE 26

Section 82 20

DERIVATIVE CONTRACTS

PART 1

INTRODUCTION

Profits arising from derivative contracts

- 1 (1) For the purposes of corporation tax all profits arising to a company from its derivative contracts shall be chargeable to tax as income in accordance with this Schedule. 25
- (2) Except where otherwise indicated, the amounts to be brought into account in accordance with this Schedule in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter. 30

PART 2

DERIVATIVE CONTRACTS

Derivative contracts and relevant contracts

- 2 (1) For the purposes of the Corporation Tax Acts a company’s derivative contracts are those of its relevant contracts which satisfy the following provisions of this Schedule. 35
- (2) For the purposes of this Schedule a “relevant contract” is –
- (a) an option,

- (b) a future, or
- (c) a contract for differences.

Contracts to satisfy accounting requirements etc

- 3 (1) A relevant contract is not a derivative contract for the purposes of this Schedule for any accounting period unless— 5
- (a) it is treated for accounting purposes as a derivative financial instrument,
 - (b) in the case of a relevant contract falling within paragraph 6 or 7 which is not treated as described in paragraph (a), it is treated for accounting purposes as a financial asset, or 10
 - (c) in the case of a relevant contract which is not treated as described in paragraph (a) or (b), it falls within sub-paragraph (2).
- (2) A relevant contract falls within this sub-paragraph if—
- (a) its underlying subject matter is commodities, or
 - (b) it is a contract for differences whose underlying subject matter is— 15
 - (i) intangible fixed assets,
 - (ii) weather conditions, or
 - (iii) creditworthiness.
- (3) For the purposes of sub-paragraph (1)(a), a relevant contract of a company is treated for accounting purposes as a derivative financial instrument for an accounting period if, for that accounting period, it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period (or would be so treated if the company were a company which used the relevant accounting standard in respect of the relevant contract). 20 25
- (4) For the purposes of sub-paragraph (1)(b), a relevant contract of a company is treated for accounting purposes as a financial asset for an accounting period if, for that accounting period, it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period (or would be so treated if the company were a company which used the relevant accounting standard in respect of the relevant contract). 30
- (5) For the purposes of sub-paragraphs (3) and (4), the relevant accounting standard used by a company for an accounting period is—
- (a) in relation to any accounting period for which it is required or permitted to be used by the company, Financial Reporting Standard 35 13 issued in September 1998 by the Accounting Standards Board, as it has effect for periods of account ending on 31st December 2002, or
 - (b) in relation to any accounting period for which it is required or permitted to be used by the company, any subsequent accounting standard dealing with transactions which are derivative financial instruments or financial assets under Financial Reporting Standard 40 13, as from time to time amended.

Contracts excluded by virtue of their underlying subject matter

- 4 (1) A relevant contract is not a derivative contract for the purposes of this Schedule if its underlying subject matter consists wholly of any one or more of the excluded types of property or is treated as consisting wholly of such property. 45

- (2) For the purposes of this paragraph as it relates to an option or future, the excluded types of property are—
- (a) land, whether situated in the United Kingdom or elsewhere;
 - (b) tangible movable property, other than commodities which are tangible assets; 5
 - (c) intangible fixed assets;
 - (d) shares in a company;
 - (e) rights of a unit holder under a unit trust scheme; and
 - (f) any assets representing loan relationships to which either section 92 or 93 of the Finance Act 1996 (c. 8) applies. 10
- (3) For the purposes of this paragraph as it relates to a contract for differences, the excluded types of property are those falling within paragraphs (a), (b) and (d) to (f) of sub-paragraph (2).
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of any one or more of the excluded types of property. 15
- (5) This paragraph has effect subject to paragraphs 5 to 8 (which qualify the exclusion of relevant contracts by this paragraph).

Qualified exclusion: contract held by company for purposes of trade

- 5 (1) Paragraph 4 does not prevent a relevant contract to which this paragraph applies from being a derivative contract. 20
- (2) This paragraph applies to a relevant contract of a company if—
- (a) it is entered into or acquired by the company for the purposes of a trade carried on by it, and
 - (b) its underlying subject matter consists, or is treated as consisting, wholly of— 25
 - (i) shares in a company,
 - (ii) rights of a unit holder under a unit trust scheme, or
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 applies. 30
- (3) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (2)(b).

Qualified exclusion: contract producing guaranteed return

- 6 (1) Paragraph 4 does not prevent a relevant contract to which this paragraph applies from being a derivative contract. 35
- (2) This paragraph applies to a relevant contract of a company if—
- (a) its underlying subject matter consists, or is treated as consisting, wholly of—
 - (i) shares in a company, 40
 - (ii) rights of a unit holder under a unit trust scheme, or
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 applies, and
 - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition referred to in sub-paragraph (2)(b) is that— 45

-
- (a) the relevant contract is designed to produce a guaranteed return, or
(b) the relevant contract and one or more of the following, namely –
- (i) one or more other relevant contracts, whose underlying subject matter consists wholly or partly of shares in a company, rights of a unit holder under a unit trust scheme or assets representing loan relationships to which either section 92 or 93 of the Finance Act 1996 (c. 8) applies, and which would be derivative contracts if the condition in this sub-paragraph were satisfied in relation to them, 5
 - (ii) one or more assets representing loan relationships to which either section 92 or 93 of that Act applies, and 10
 - (iii) one or more assets representing loan relationships to which section 93A of that Act applies,
- are associated transactions designed to produce a guaranteed return.
- (4) For the purposes of this paragraph – 15
- (a) the return on a relevant contract of a company comprises any amounts accruing to the company as respects the contract for any accounting period, and
 - (b) the return on an asset representing a loan relationship of a company is the amount that must be paid to discharge the money debt arising in connection with that relationship. 20
- (5) For the purposes of this paragraph the relevant contract in question is, or that contract and the other associated transactions are, designed to produce a guaranteed return if, as regards that contract, or as regards that contract and the other associated transactions taken together, it would be reasonable to assume, from considering – 25
- (a) the likely effect of that contract or of that contract and the other associated transactions,
 - (b) the circumstances in which – 30
 - (i) that contract is entered into or acquired, or
 - (ii) the contract and the other associated transactions, or any of them, are entered into or acquired, or
 - (c) the matters in both of paragraphs (a) and (b),
- that the main purpose (or one of the main purposes) of that contract, or of that contract and the other associated transactions, is or was the production of a guaranteed return from that contract, or from that contract and any one or more of the other associated transactions. 35
- (6) For the purposes of this paragraph a guaranteed return is produced from the relevant contract in question, or from that contract and any one or more of the other associated transactions wherever (as regards that contract or as regards that contract and those transactions, taken together) risks from fluctuations in the underlying matter of that contract, or of that contract or any one or more of the other associated transactions, are so eliminated or reduced as to produce a return from that contract, or from that contract and any one or more of the other associated transactions, which equates, in substance, to the return on an investment of money at interest. 40 45
- (7) For the purposes of sub-paragraph (6) the cases where risks from fluctuations in the underlying matter of the relevant contract in question, or of that contract or any one or more of the other associated transactions, are eliminated or reduced shall be deemed to include any case where the main 50

reason, or one of the main reasons, for the choice of that underlying matter is –

- (a) that there appears to be no risk that it will fluctuate, or
 - (b) that the risk that it will fluctuate appears to be insignificant.
- (8) In this paragraph – 5
- (a) the references, in relation to an asset representing a loan relationship to which section 92 of the Finance Act 1996 (c. 8) applies, to the underlying matter are references to the value of shares in a company which may be acquired under that relationship;
 - (b) the references, in relation to an asset representing a loan relationship to which section 93 or 93A of the Finance Act 1996 applies, to the underlying matter are references to the value of chargeable assets of a particular description to which that relationship is linked; 10
 - (c) the references, in relation to a relevant contract, to fluctuations in the underlying matter are references to fluctuations determined by reference to its underlying subject matter. 15
- (9) For the purposes of this paragraph a company is a connected company in relation to another company if, in the accounting period in question, there is a connection between the company and that other company; and whether there is a connection between those companies shall be determined in accordance with sections 87(3) and (4) and 87A of the Finance Act 1996 (disregarding section 88 of that Act). 20
- (10) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (2)(a). 25

Qualified exclusion: guaranteed amount payable on maturity

- 7 (1) Paragraph 4 does not prevent a relevant contract to which this paragraph applies from being a derivative contract.
- (2) This paragraph applies to a relevant contract of a company if – 30
- (a) its underlying subject matter consists, or is treated as consisting, wholly of –
 - (i) shares in a company,
 - (ii) rights of a unit holder under a unit trust scheme, or
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 applies, and 35
 - (b) it satisfies the condition in sub-paragraph (3).
- (3) The condition referred to in sub-paragraph (2)(b) is that – 40
- (a) the relevant contract is designed to secure that the relevant amount payable in respect of the relevant contract does not fall below the guaranteed amount, or
 - (b) the relevant contract and one or more of the following, namely – 45
 - (i) one or more other relevant contracts, whose underlying subject matter consists wholly or partly of shares in a company, rights of a unit holder under a unit trust scheme or assets representing loan relationships to which either section 92 or 93 of the Finance Act 1996 applies, and which would be derivative contracts if the condition in this sub-paragraph were satisfied in relation to them,

-
- (ii) one or more assets representing loan relationships to which either section 92 or 93 of that Act applies, and
- (iii) one or more assets representing loan relationships to which section 93A of that Act applies,
- are associated transactions designed to secure that the relevant amount payable in respect of the associated transactions does not fall below the guaranteed amount. 5
- (4) For the purposes of this paragraph the relevant contract in question is, or that contract and the other associated transactions are, designed to secure that the relevant amount payable in respect of that contract, or that contract and any one or more of the other associated transactions, does not fall below the guaranteed amount if, as regards that contract, or as regards that contract and the transactions, taken together, it would be reasonable to assume, from considering – 10
- (a) the likely effect of that contract or of that contract and the other associated transactions, 15
- (b) the circumstances in which –
- (i) that contract is entered into or acquired, or
- (ii) that contract and the other associated transactions, or any of them, are entered into or acquired, or 20
- (c) the matters in both of paragraphs (a) and (b),
- that the main purpose (or one of the main purposes) of that contract, or of that contract and the other associated transactions, is or was to secure that the relevant amount so payable does not fall below the guaranteed amount.
- (5) For the purposes of this paragraph the guaranteed amount is – 25
- (a) in a case where the relevant contract in question is designed as described in sub-paragraph (3)(a), 80% of the consideration paid or payable by the company for entering into, or acquiring, that contract, or
- (b) in a case where the relevant contract in question and the other associated transactions are designed as described in sub-paragraph (3)(b), 80% of the consideration paid or payable by the company or a company which is a connected company in relation to that company for entering into, or acquiring, any one or more of the associated transactions. 30
- 35
- (6) For the purposes of this paragraph the relevant amount payable is –
- (a) in a case where the relevant contract in question is designed as described in sub-paragraph (3)(a), the amount payable, in money or money's worth, to any person on the maturity of that contract, or
- (b) in a case where the relevant contract in question and the other associated transactions are designed as described in sub-paragraph (3)(b), the amount payable, in money or money's worth, to any person on the maturity of any one or more of the associated transactions. 40
- (7) For the purposes of sub-paragraph (6) the amount payable on maturity is – 45
- (a) in the case of a relevant contract, the amount payable on performance of the relevant contract, or
- (b) in the case of an asset representing a loan relationship, the amount that must be paid to discharge the money debt arising in connection with that relationship. 50

- (8) For the purposes of this paragraph a company is a connected company in relation to another company if, in the accounting period in question, there is a connection between the company and that other company; and whether there is a connection between those companies shall be determined in accordance with sections 87(3) and (4) and 87A of the Finance Act 1996 (c. 8) (disregarding section 88 of that Act). 5
- (9) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (2)(a).
- (10) This paragraph has effect subject to paragraph 48 (which provides for a company to elect to treat a relevant contract falling within this paragraph as two assets). 10

Qualified exclusion: contract held by company to provide insurance benefits

- 8 (1) Paragraph 4 does not prevent a relevant contract to which this paragraph applies from being a derivative contract. 15
- (2) This paragraph applies to a relevant contract of a company if—
- (a) the company is a company carrying on long-term insurance business,
 - (b) the relevant contract is or was entered into or acquired by the company in order to provide such benefits as are described in sub-paragraph (3), and 20
 - (c) the underlying subject matter of the relevant contract consists, or is treated as consisting, wholly of—
 - (i) shares in a company,
 - (ii) rights of a unit holder under a unit trust scheme, or 25
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 applies.
- (3) The benefits referred to in sub-paragraph (2)(b) are benefits under policies of life insurance or capital redemption policies where—
- (a) the terms of the policy or contract permit part of the rights conferred by the policy or contract to be surrendered by the holder of the policy or contract at intervals of one year or less, and 30
 - (b) the amount which may be paid on the surrender of such part of the rights conferred equates, in substance, to the return on an investment of money at interest. 35
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (2)(c).

Underlying subject matter which is subordinate or of small value disregarded

- 9 (1) This paragraph applies in relation to a relevant contract which falls within any of sub-paragraphs (2) to (4). 40
- (2) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of—
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (f) of sub-paragraph (2) of paragraph 4 (or, in the 45

- case of a contract for differences, within paragraphs (a), (b) and (d) to (f) of that sub-paragraph), and
- (b) other underlying subject matter which is –
- (i) subordinate in relation to any of the property referred to in paragraph (a), or 5
 - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (3) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of –
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (c) of sub-paragraph (2) of paragraph 4 (or, in the case of a contract for differences, within paragraphs (a) and (b) of that sub-paragraph), and 10
 - (b) other underlying subject matter which is – 15
 - (i) subordinate in relation to any of the property referred to in paragraph (a), or
 - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (4) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of – 20
- (a) any one or more of the excluded types of property falling within paragraphs (d) to (f) of sub-paragraph (2) of paragraph 4, and
 - (b) other underlying subject matter which is – 25
 - (i) subordinate in relation to any of the property referred to in paragraph (a), or
 - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) Where this paragraph applies in relation to a relevant contract, its underlying subject matter shall be treated for the purposes of this Schedule as if it consisted wholly of – 30
- (a) in the case of a relevant contract falling within sub-paragraph (2), the excluded types of property referred to in paragraph (a) of that sub-paragraph,
 - (b) in the case of a relevant contract falling within sub-paragraph (3), the excluded types of property referred to in paragraph (a) of that sub-paragraph, or 35
 - (c) in the case of a relevant contract falling within sub-paragraph (4), the excluded types of property referred to in paragraph (a) of that sub-paragraph.
- (6) For the purposes of this paragraph whether part of the underlying subject matter of a relevant contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the relevant contract. 40

Associated transactions

- 10 (1) For the purposes of this Part of this Schedule two or more transactions are associated transactions if all of them are entered into or acquired in pursuance of the same scheme or arrangements. 45

- (2) Nothing in this Part shall be construed as preventing transactions with different parties, or transactions with parties different from the parties to the scheme or arrangements in pursuance of which they are entered into or acquired, from being associated transactions.
- (3) For the purposes of this paragraph the cases in which any two or more transactions are to be taken to be entered into or acquired in pursuance of the same scheme or arrangements shall include any case in which it would be reasonable to assume, from either or both of—
- (a) the likely effect of the transactions, and
 - (b) the circumstances in which the transactions, or any of them, are entered into or acquired,
- that neither of them or, as the case may be, none of them would have been entered into or acquired independently of the other or the others.
- (4) In this paragraph “scheme or arrangements” includes schemes, arrangements and understandings of any kind, whether or not legally enforceable.

Meaning of “underlying subject matter”

- 11 (1) In this Part of this Schedule references to the underlying subject matter of a relevant contract are to be construed in accordance with this paragraph.
- (2) The underlying subject matter of an option is—
- (a) the property which would fall to be delivered if the option were exercised, or
 - (b) where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (3) The underlying subject matter of a future is—
- (a) the property which would fall to be delivered if the future were allowed to run to delivery, or
 - (b) where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (4) The underlying subject matter of a contract for differences is—
- (a) the property whose value or price is referred to in the contract for differences, or
 - (b) where an index or factor is designated in the contract for differences, the matter by reference to which the index or factor is determined.
- (5) In the case of a contract for differences, its underlying subject matter may include—
- (a) interest rates;
 - (b) weather conditions;
 - (c) creditworthiness.
- (6) Interest rates are not the underlying subject matter of a relevant contract in a case where, under the terms of that contract,—
- (a) the date on which a party to that contract becomes subject to a duty to make a payment is a variable date, and
 - (b) the amount of that payment varies according to the date of payment,

and the terms of the relevant contract refer to an interest rate or rates for the purpose only of establishing that amount.

Definition of terms relating to derivative contracts

- 12 (1) This paragraph defines these expressions for the purposes of this Part of this Schedule – 5
- (a) a capital redemption policy;
 - (b) a contract for differences;
 - (c) a future;
 - (d) intangible fixed assets;
 - (e) an option; 10
 - (f) shares in a company;
 - (g) a warrant.
- (2) A “capital redemption policy” is a contract effected in the course of capital redemption business (within the meaning of section 458 of the Taxes Act 1988). 15
- (3) A “contract for differences” is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in –
- (a) the value or price of property referred to in the contract, or
 - (b) an index or other factor designated in the contract.
- (4) For the purposes of sub-paragraph (3)(b) an index or factor may be determined by reference to any matter and, for those purposes, a numerical value may be attributed to any variation in a matter. 20
- (5) None of the following is a contract for differences –
- (a) a contract of insurance;
 - (b) a capital redemption policy; 25
 - (c) a contract of indemnity;
 - (d) a guarantee;
 - (e) a warranty; and
 - (f) a loan relationship.
- (6) A “future” is a contract for the sale of property under which delivery is to be made – 30
- (a) at a future date agreed when the contract is made, and
 - (b) at a price so agreed.
- (7) For the purposes of sub-paragraph (6)(b) a price is to be taken to be agreed when the contract is made – 35
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
 - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery. 40
- (8) An “option” includes a warrant.
- (9) A “warrant” is an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company; 45

- and for these purposes it is immaterial whether the shares or assets to which the warrant relates exist or are identifiable.
- (10) References to a future or option do not include references to a contract whose terms –
- (a) provide that one party is liable to make, and the other party is entitled to receive, a payment in full settlement of all obligations under the contract, and
 - (b) do not provide for the delivery of any property.
- Nothing in this sub-paragraph has effect to exclude, from references to a future or option, a future or option whose underlying subject matter is currency.
- (11) “Intangible fixed assets” has the same meaning as in Part 1 of Schedule 29 to this Act, but any asset excluded by Part 10 of that Schedule is not an intangible fixed asset for the purposes of this Part of this Schedule.
- (12) “Share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise.

Power to amend paragraphs 2 to 12

- 13 (1) The Treasury may by order amend any of paragraphs 2 to 12.
- (2) The provision that may be made by an order under this paragraph includes provision –
- (a) adding to, or varying, the descriptions of contract which are derivative contracts within paragraph 2 or removing any such description of contract, or
 - (b) adding to, or varying, the descriptions of contracts which are excluded under paragraph 4 or removing any such description of contract.
- (3) The provision that may be made under sub-paragraph (2)(b), in relation to contracts which are excluded under paragraph 4, includes provision adding to, or varying, the provisions which qualify the exclusion of contracts under that paragraph or removing any such qualifying provision.
- (4) To the extent that an order under this paragraph includes provision –
- (a) varying the requirements under paragraph (a) or (b) of sub-paragraph (1) of paragraph 3 as to the treatment of a contract for accounting purposes, or
 - (b) adding to, or varying, the descriptions of contracts which fall within sub-paragraph (2) of that paragraph,
- it may provide for such variations to have effect in relation to accounting periods which end on or after the day on which the order comes into force (whenever beginning).
- (5) The power to make an order under this paragraph includes power –
- (a) to make different provision for different cases, and
 - (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

PART 3

METHOD OF TAXATION

Method of bringing amounts into account

- 14 (1) For the purposes of corporation tax the profits and losses arising from the derivative contracts of a company shall be computed in accordance with this paragraph using the credits and debits given for the accounting period in question by the following provisions of this Schedule. 5
- (2) To the extent that, in any accounting period, a derivative contract of a company is one to which the company is party for the purposes of a trade carried on by it, the credits and debits given in respect of that contract for that period shall be treated (according to whether they are credits or debits) either – 10
- (a) as receipts of that trade falling to be brought into account in computing the profits of that trade for that period; or
- (b) as expenses of that trade which are deductible in computing those profits. 15
- (3) Where for any accounting period there are, in respect of the derivative contracts of a company, credits and debits that are not brought into account under sub-paragraph (2), they shall be brought into account for that accounting period as if they were non-trading credits or non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company. 20
- (4) Sub-paragraph (2), so far as it provides for any amount to be deductible as mentioned in paragraph (b) of that sub-paragraph, shall have effect notwithstanding anything in section 74 of the Taxes Act 1988 (allowable deductions). 25

Credits and debits brought into account

- 15 (1) The credits and debits to be brought into account in the case of any company in respect of its derivative contracts shall be the sums which, in accordance with an authorised accounting method and when taken together, fairly represent, for the accounting period in question – 30
- (a) all profits and losses of the company which (disregarding any charges or expenses) arise to the company from its derivative contracts and related transactions; and
- (b) all charges and expenses incurred by the company under or for the purposes of its derivative contracts and related transactions. 35
- (2) The reference in sub-paragraph (1)(a) to the profits and losses arising to a company does not include a reference to any amounts required to be transferred to the company's share premium account.
- (3) The reference in sub-paragraph (1)(a) to the profits and losses arising to a company includes – 40
- (a) a reference to any profits or losses which, in accordance with generally accepted accounting practice, are carried to or sustained by any reserve maintained by the company, and
- (b) a reference to any forward premiums or discounts which arise from a derivative contract whose underlying subject matter consists 45

- wholly or partly of currency and which, in accordance with generally accepted accounting practice, are brought into account as profits or losses.
- (4) The reference in sub-paragraph (1)(b) to charges and expenses incurred for the purposes of a company's derivative contracts and related transactions does not include a reference to any charges or expenses other than those incurred directly – 5
- (a) in bringing any of those contracts into existence;
 - (b) in entering into or giving effect to any of those transactions;
 - (c) in making payments under any of those contracts or in pursuance of any of those transactions; 10
 - (d) in taking steps for ensuring the receipt of payments under any of those contracts or in accordance with any of those transactions.
- (5) Where – 15
- (a) any charges or expenses are incurred by a company for purposes connected –
 - (i) with entering into a derivative contract or related transaction, or
 - (ii) with giving effect to any obligation that might arise under a derivative contract or related transaction, 20
 - (b) at the time when the charges or expenses are incurred, the contract or transaction is one into which the company may enter but has not entered, and
 - (c) if that contract or transaction had been entered into by that company, the charges or expenses would be charges or expenses incurred as mentioned in sub-paragraph (4), 25
- those charges or expenses shall be treated for the purposes of this Schedule as charges or expenses in relation to which debits may be brought into account in accordance with sub-paragraph (1)(b) to the same extent as if the contract or transaction had been entered into. 30
- (6) Where –
- (a) different authorised accounting methods are used for the purposes of this Schedule as respects the same derivative contract for different parts of the same accounting period or for successive accounting periods, and 35
 - (b) an amount is brought into account for the purposes of the company's statutory accounts in respect of the change of method,
- that amount shall be taken for the purposes of this Schedule to be included among the sums in respect of which credits and debits fall to be brought into account for the purposes of this Schedule in accordance with sub-paragraph (1)(a). 40
- (7) In this Schedule "related transaction", in relation to a derivative contract, means any disposal or acquisition (in whole or in part) of rights or liabilities under the derivative contract.
- (8) The cases where there shall be taken for the purposes of sub-paragraph (7) to be a disposal or acquisition of rights or liabilities under a derivative contract shall include – 45
- (a) those where such rights or liabilities are transferred or extinguished by any sale, gift, surrender or release, and

- (b) those where the contract is discharged by performance in accordance with its terms.

(9) This paragraph has effect subject to paragraph 16.

Exchange gains and losses arising from derivative contracts

- 16 (1) The reference in paragraph 15(1)(a) to the profits and losses arising to a company from its derivative contracts and related transactions includes a reference to exchange gains and losses arising to the company from its derivative contracts. 5
- (2) Sub-paragraph (1) is subject to the following provisions of this paragraph.
- (3) Sub-paragraph (1) does not have effect in relation to – 10
- (a) so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within sub-paragraph (4), or
 - (b) so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within a description prescribed for the purpose in regulations made by the Treasury. 15
- (4) An exchange gain or loss falls within this sub-paragraph to the extent that in accordance with generally accepted accounting practice an amount representing the whole or part of it – 20
- (a) is carried to or sustained by a reserve maintained by the company; and
 - (b) is set off by or against an amount falling within sub-paragraph (5).
- (5) An amount falls within this sub-paragraph if – 25
- (a) it represents the whole or part of an exchange gain or loss arising to the company in relation to any asset of the company; and
 - (b) in accordance with generally accepted accounting practice it is carried to or sustained by the reserve mentioned in sub-paragraph (4).
- (6) Where, by virtue of sub-paragraph (3), sub-paragraph (1) does not have effect in relation to an amount representing the whole or part of an exchange gain or loss, paragraph 15(3) shall not have effect in relation to that amount (but this sub-paragraph is subject to regulations under sub-paragraph (7)). 30
- (7) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which sub-paragraph (1) does not, by virtue of sub-paragraph (3), have effect. 35
- (8) The reference in sub-paragraph (7) to bringing amounts into account is a reference to bringing amounts into account – 40
- (a) for the purposes of this Schedule, as credits or debits arising to a company from its derivative contracts and related transactions; or
 - (b) for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (9) Any power to make regulations under this paragraph includes power to make different provision for different cases.

PART 4

ACCOUNTING METHODS

Authorised accounting methods

- 17 (1) Subject to the following provisions of this Schedule, the alternative accounting methods that are authorised for the purposes of this Schedule are – 5
- (a) an accruals basis of accounting; and
 - (b) a mark to market basis of accounting under which any derivative contract to which that basis is applied is brought into account in each accounting period at a fair value. 10
- (2) An accounting method applied in any case shall be treated as authorised for the purposes of this Schedule only if –
- (a) subject to paragraphs (b) to (d), it is in conformity with generally accepted accounting practice to use that method in that case;
 - (b) it contains proper provision for allocating payments under a derivative contract, or arising as a result of a related transaction, to accounting periods; 15
 - (c) it contains proper provision for determining exchange gains and losses from a derivative contract for accounting periods; and
 - (d) where it is an accruals basis of accounting, it does not contain any provision (other than provision in respect of exchange losses or provision comprised in authorised arrangements for bad debt) that gives debits by reference to the valuation at different times of any derivative contract. 20
- (3) In the case of an accruals basis of accounting, proper provision for allocating payments under a derivative contract to accounting periods is provision which – 25
- (a) allocates payments to the period to which they relate, without regard to the periods in which they are made or received or in which they become due and payable; 30
 - (b) includes provision which, where payments relate to two or more periods, apportions them on a just and reasonable basis between the different periods;
 - (c) assumes, subject to authorised arrangements for bad debt, that every amount payable to the company under the derivative contract will be paid in full as it becomes due; 35
 - (d) secures the making of the adjustments required in the case of the derivative contract by authorised arrangements for bad debt; and
 - (e) provides, subject to authorised arrangements for bad debt, that, where there is a release of any liability owed by the company under the derivative contract, the appropriate amount in respect of the release is credited to the company in the accounting period in which the release takes place. 40
- (4) In the case of a mark to market basis of accounting, proper provision for allocating payments under a derivative contract to accounting periods is provision which allocates payments to the periods in which they become due and payable. 45

- (5) In this paragraph the references to authorised arrangements for bad debt are references to accounting arrangements under which debits and credits are brought into account in conformity with the provisions of paragraph 22.
- (6) In this paragraph “fair value”, in relation to a derivative contract of a company, means the amount which, at the time as at which the value falls to be determined, is the amount that the company would obtain from or, as the case may be, would have to pay to an independent person for –
- (a) the transfer of all the company’s rights under the contract in respect of amounts which at that time are not yet due and payable; and
 - (b) the release of all the company’s liabilities under the contract in respect of amounts which at that time are not yet due and payable.

Application of accounting methods

- 18 (1) This paragraph has effect, subject to the following provisions of this Schedule, for the determination of which of the alternative authorised accounting methods that are available by virtue of paragraph 17 is to be used as respects the derivative contracts of a company.
- (2) Different methods may be used as respects different derivative contracts or, as respects the same derivative contract, for different accounting periods or different parts of the same accounting period.
- (3) If a basis of accounting which is or equates with an authorised accounting method is used as respects any derivative contract of a company in a company’s statutory accounts, then the method which is to be used for the purposes of this Schedule as respects that contract for the accounting period, or part of a period, for which that basis is used in those accounts shall be –
- (a) where the basis used in those accounts is an authorised accounting method, that method; and
 - (b) where it is not, the authorised accounting method to which it equates;
- but this sub-paragraph is subject to paragraphs 19 to 21.
- (4) For any period or part of a period for which the authorised accounting method to be used as respects a derivative contract of a company is not –
- (a) the method determined under sub-paragraph (3),
 - (b) an authorised mark to market basis of accounting in accordance with an election under paragraph 19, or
 - (c) an authorised mark to market basis of accounting in accordance with paragraph 20 or 21,
- an authorised accruals basis of accounting shall be used for the purposes of this Schedule as respects that derivative contract.
- (5) For the purposes of this paragraph (but subject to sub-paragraph (6)) –
- (a) a basis of accounting equates with an authorised accruals basis of accounting if it purports to allocate payments under a derivative contract to accounting periods according to when they are taken to accrue; and
 - (b) a basis of accounting equates with an authorised mark to market basis of accounting if it purports in respect of a derivative contract –
 - (i) to produce credits or debits computed by reference to the determination, as at different times in an accounting period, of a fair value; and

- (ii) to produce credits or debits relating to payments under that derivative contract according to when they become due and payable.
- (6) An accounting method which purports to make any such allocation of payments under a derivative contract as is mentioned in sub-paragraph (5)(a) shall be taken for the purposes of this paragraph to equate with an authorised mark to market basis of accounting (rather than with an authorised accruals basis of accounting) if—
- (a) it purports to bring that derivative contract into account in each accounting period at a value which would be fair value if the valuation were made on the basis that any periodic payments falling to be made under the contract were to be disregarded to the extent that they have already accrued; and
- (b) the credits and debits produced in the case of that contract by that method (when it is properly applied) correspond, for all practical purposes, to the credits and debits produced in the case of that contract, and for the same accounting period, by an authorised mark to market basis of accounting.

Application of accounting methods: election to follow generally accepted accounting practice

- 19 (1) Sub-paragraph (2) has effect if, in the case of a company falling within paragraph 52(1)(c) or (d) (companies whose statutory accounts are accounts to which Part 1 of Schedule 21C or 21D to the Companies Act 1985 (c. 6) applies or accounts falling to be drawn up in accordance with the requirements imposed under the law of the home state),—
- (a) an authorised mark to market basis of accounting would be used as respects some or all of the company's derivative contracts, were the company a UK company following generally accepted accounting practice, but
- (b) that is not the basis of accounting used as respects those derivative contracts in the company's statutory accounts.
- (2) Where this sub-paragraph has effect in relation to a company, the company may elect to use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Schedule in relation to every derivative contract as respects which that basis would be used were it a UK company following generally accepted accounting practice.
- (3) Any election under sub-paragraph (2)—
- (a) must be made before the expiration of the period of two years following the end of the company's first accounting period beginning on or after 1st October 2002 in which it is party to a derivative contract in relation to which an election under sub-paragraph (2) may be made;
- (b) has effect for that accounting period and all subsequent accounting periods of the company; and
- (c) is irrevocable.
- (4) A company which makes an election under sub-paragraph (2) as respects its derivative contracts shall be taken for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) to have at the same time made an election under section 86(3A) of that Act having effect—
- (a) for the accounting periods mentioned in sub-paragraph (3)(b), and

- (b) as respects any loan relationships to which the company is or may become party in any of those accounting periods, and that election shall so have effect notwithstanding anything in paragraph (a) or (b) of subsection (3B) of that section.

Application of accounting methods: requirement to follow generally accepted accounting practice 5

- 20 (1) Sub-paragraph (2) has effect if, in the case of a company falling within paragraph 52(1)(c) or (d), –
- (a) the company has not made an election under paragraph 19,
 - (b) an authorised mark to market basis of accounting would be used for an accounting period – 10
 - (i) as respects some or all of the company’s derivative contracts, and
 - (ii) as respects some or all of its loan relationships,were the company a UK company following generally accepted accounting practice, and 15
 - (c) that basis of accounting –
 - (i) is used in the company’s statutory accounts as respects those loan relationships for that accounting period, but
 - (ii) is not the basis of accounting used in the company’s statutory accounts as respects those derivative contracts for that accounting period. 20
- (2) Where this sub-paragraph has effect in relation to any accounting period, the company must for that accounting period use an authorised mark to market basis of accounting as its authorised accounting method for the purposes of this Schedule in relation to every derivative contract as respects which that basis would be used were it a UK company following generally accepted accounting practice. 25

Basis of accounting for contracts falling within paragraph 6, 7 or 8

- 21 (1) This paragraph applies in relation to a contract which is a derivative contract for the purposes of this Schedule by virtue of – 30
- (a) paragraph 6 (contracts producing a guaranteed return),
 - (b) paragraph 7 (contracts where guaranteed amount payable on maturity), or
 - (c) paragraph 8 (contracts to provide insurance benefits). 35
- (2) Where this paragraph applies in relation to a derivative contract, the accounting method to be used as respects the derivative contract for an accounting period shall be an authorised mark to market basis of accounting.

PART 5

SPECIAL PROVISION FOR BAD DEBT ETC

Bad debt etc

- 22 (1) In determining the credits and debits to be brought into account in accordance with an accruals basis of accounting, a departure from the assumption in the case of the derivative contracts of a company that every amount payable under those contracts to the company will be paid in full as it becomes due shall be allowed to the extent only that – 5
- (a) a debt is a bad debt;
 - (b) a doubtful debt is estimated to be bad; or 10
 - (c) a liability to pay any amount is released.
- (2) Such a departure shall be made only where the accounting arrangements of the company satisfy sub-paragraphs (3) and (4).
- (3) This sub-paragraph is satisfied if, the accounting arrangements allowing the departure also require appropriate adjustments, in the form of credits, to be made if the whole or any part of an amount taken or estimated to represent an amount of bad debt is paid or otherwise ceases to be an amount in respect of which such a departure is allowed. 15
- (4) This sub-paragraph is satisfied if, in determining any credits and debits to be brought into account in respect of exchange gains and losses arising from the company's derivative contracts, the accounting arrangements allowing the departure require an amount payable under a derivative contract – 20
- (a) to be left out of account, to the extent that such a departure is allowed; and
 - (b) to be taken into account again, to the extent that it is represented by credits brought into account under sub-paragraph (3). 25
- (5) Where –
- (a) in the case of a derivative contract of a company, a liability owed by the company to pay an amount under the contract is released, and
 - (b) the release takes place in an accounting period for which an authorised accruals basis of accounting is used as respects the contract, 30
- no credit in respect of the release shall be required to be brought into account in the case of the company if the release is part of a relevant arrangement or compromise (within the meaning given by section 74(2) of the Taxes Act 1988). 35

PART 6

SPECIAL COMPUTATIONAL PROVISIONS

Derivative contracts for unallowable purposes

- 23 (1) Where in any accounting period a derivative contract of a company has an unallowable purpose, this paragraph shall apply for the purpose of determining the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule. 40

-
- (2) Subject to sub-paragraph (4), the credits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of the exchange credits given by the authorised accounting method used as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose. 5
- (3) Subject to sub-paragraph (4), the debits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of the debits given by the authorised accounting method used as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose. 10
- (4) If, in the case of the derivative contract, –
- (a) the amount of the debits referable to the unallowable purpose, in accordance with sub-paragraph (3), for that accounting period, exceeds
 - (b) the amount of the exchange credits referable to that purpose, in accordance with sub-paragraph (2), for that accounting period, 15
- the difference between the amounts (the “net loss”) may be brought into account as a debit to the extent permitted by sub-paragraph (5).
- (5) An amount of accumulated net losses may be brought into account for an accounting period if, and to the extent that, there is for that period an amount of accumulated credits (other than exchange credits). 20
- (6) For the purposes of sub-paragraph (5) the amount of accumulated net losses is, in relation to an accounting period, –
- (a) the amount of any net loss arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, in accordance with sub-paragraph (4), less 25
 - (b) the amount of any such net loss as was brought into account in accordance with sub-paragraph (5) in any earlier accounting period.
- (7) For the purposes of sub-paragraph (5) the amount of accumulated credits (other than exchange credits) is, in relation to an accounting period, – 30
- (a) the amount of any credits (other than exchange credits) arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, less
 - (b) an amount equal to the amount of any net loss, arising in the case of the derivative contract, which was brought into account in accordance with sub-paragraph (5) in any earlier accounting period. 35
- (8) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Schedule as respects any matter are in consequence also amounts which, in accordance with paragraph 1(2), are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Schedule. 40
- (9) For the purposes of this paragraph, a credit is an exchange credit, in the case of a company, to the extent that it is attributable to any exchange gains arising to the company which, by virtue of paragraph 16, are included in the reference to the profits arising to the company in paragraph 15(1)(a). 45
- (10) This section is supplemented by paragraph 24.

Derivative contracts for unallowable purposes: supplementary

- 24 (1) For the purposes of paragraph 23 a derivative contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company – 5
- (a) is party to the contract, or
- (b) enters into transactions which are related transactions by reference to that contract,
- include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company. 10
- (2) For the purposes of this paragraph the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (3) For the purposes of this paragraph, where one of the purposes for which a company – 15
- (a) is party to a derivative contract at any time, or
- (b) enters into a transaction which is a related transaction by reference to any derivative contract of the company,
- is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time or, as the case may be, for which the company enters into that transaction. 20
- (4) The reference in sub-paragraph (3) to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person). 25
- (5) In this paragraph “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).

Debits and credits treated as relating to capital expenditure

- 25 (1) This paragraph applies where any debit or credit given by an authorised accounting method for any accounting period in respect of a company’s derivative contract is allowed by generally accepted accounting practice to be treated, in the accounts of the company, as an amount brought into account in determining the value of a fixed capital asset or project. 30
- (2) Notwithstanding the application to it of the treatment allowed by generally accepted accounting practice, the debit or credit shall be brought into account for the purposes of corporation tax, for the accounting period for which it is given, in the same way as a debit or credit which, in accordance with generally accepted accounting practice, is brought into account in determining the company’s profit or loss for that period. 35 40

Transfers of value to connected companies

- 26 (1) This paragraph applies where –
- (a) as a result of the expiry of an option of a company which, until its expiry, was a derivative contract of the company, there is a transfer of value by the company (“the transferor”) to a company which is a connected company in relation to it (“the transferee”), and 45

- (b) the transferee is not chargeable to corporation tax, in respect of the derivative contract, under or by virtue of this Schedule.
- (2) In order to determine, for the purposes of sub-paragraph (1)(a), whether there is a transfer of value, it shall be assumed that—
 - (a) if there had not been a connection between the transferor and the transferee, the option would not have expired, and 5
 - (b) if there had not been such a connection, it would have been exercised on the date on which it expired.
- (3) Where this paragraph applies in relation to the expiry of the option of the transferor, the transferor shall bring the appropriate amount into account in accordance with paragraph 15 for the appropriate accounting period as a credit in respect of the derivative contract. 10
- (4) In sub-paragraph (3)—
 - (a) the appropriate accounting period is the accounting period of the transferor in which the option expired, and 15
 - (b) the appropriate amount is the amount (if any) paid by the transferor to the transferee for the grant of the option by the transferee.
- (5) For the purposes of this paragraph, a company is a connected company in relation to another company if, in the accounting period in question, there is a connection between the company and that other company; and whether there is a connection between those companies shall be determined in accordance with sections 87(3) and (4) and 87A of the Finance Act 1996 (c. 8) (disregarding section 88 of that Act). 20

Exchange gains and losses where derivative contracts not on arm's length terms

- 27 (1) Sub-paragraph (2) applies where— 25
 - (a) a company is party to a derivative contract in an accounting period,
 - (b) as regards the derivative contract, an exchange gain or exchange loss arises to the company for the accounting period in question, and
 - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) to be computed for tax purposes as if the company were not party to the derivative contract. 30
- (2) Where this sub-paragraph applies, any exchange gains and losses which arise to the company from the derivative contract for the accounting period in question shall be left out of account in determining the credits and debits which are, in the case of the company, to be brought into account for the purposes of this Schedule. 35
- (3) Sub-paragraph (4) applies where—
 - (a) a company is party to a derivative contract in an accounting period,
 - (b) as regards the derivative contract an exchange gain or exchange loss arises to the company for the accounting period in question, and 40
 - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 to be computed for tax purposes as if the terms of the derivative contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm's length. 45
- (4) Where this sub-paragraph applies the credits and debits which are, in the case of the company, to be brought into account for the purposes of this

Schedule shall be determined on the assumption that, in the accounting period in question, the amount of any exchange gain or loss arising to the company from the derivative contract is the adjusted amount.

- (5) In sub-paragraph (4) the “adjusted amount” is the amount of an exchange gain or loss (including an exchange gain of nil) which would have arisen from the derivative contract if the terms of the contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm’s length. 5

Transactions within groups

- 28 (1) This paragraph applies where, as a result of any transaction or series of transactions falling within sub-paragraph (2), one of the companies there referred to (“the transferee company”) directly or indirectly replaces the other (“the transferor company”) as a party to a derivative contract. 10
- (2) The transactions or series of transactions referred to in sub-paragraph (1) are— 15
- (a) a related transaction between two companies that are —
 - (i) members of the same group, and
 - (ii) within the charge to corporation tax in respect of that transaction;
 - (b) a series of transactions having the same effect as a related transaction between two companies each of which — 20
 - (i) has been a member of the same group at any time in the course of that series of transactions, and
 - (ii) is within the charge to corporation tax in respect of the related transaction; 25
 - (c) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme; and
 - (d) any transfer between two companies which is a qualifying overseas transfer within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act 1988 (transfer of business of overseas life insurance company). 30
- (3) The credits and debits to be brought into account for the purposes of this Schedule in the case of the two companies shall be determined as follows— 35
- (a) the transaction, or series of transactions, by virtue of which the replacement takes place shall be disregarded except for the purpose of identifying the company in whose case any credit or debit not relating to that transaction, or those transactions, is to be brought into account; and
 - (b) the transferor company and the transferee company shall be deemed (except for that purpose) to be the same company. 40
- (4) References in this paragraph to one company replacing another as a party to a derivative contract shall include references to a company becoming a party to any derivative contract which confers rights or imposes duties which are equivalent to any rights or duties of the other company under a derivative contract of which that other company has previously ceased to be a party. 45
- (5) In this paragraph “insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000

- (c. 8), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section.
- (6) In this paragraph references to companies being members of the same group of companies shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12). 5
- (7) This paragraph has effect subject to paragraphs 29 and 30.

Transactions within groups: exceptions relating to insurance

- 29 (1) Paragraph 28 does not apply by virtue of sub-paragraph (2)(a) or (b) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where the asset was within one of the categories set out in section 440(4)(a) to (e) of the Taxes Act 1988 (assets held for certain categories of long term business) either immediately before the transfer or immediately afterwards. 10
- (2) Paragraph 28 does not apply by virtue of sub-paragraph (2)(c) or (d) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where – 15
- (a) the asset was an asset within one of the categories set out in section 440(4) of the Taxes Act 1988 immediately before the transfer, and
- (b) is not an asset within that category immediately afterwards.
- (3) For the purposes of sub-paragraph (2) above, where one of the companies is an overseas life insurance company an asset shall be taken to be within the same category both immediately before the transfer and immediately afterwards if it – 20
- (a) was an asset within one category immediately before the transfer, and 25
- (b) is an asset within the corresponding category immediately afterwards.
- (4) In this paragraph “overseas life insurance company” has the same meaning as in Chapter 1 of Part 12 of the Taxes Act 1988.

Transactions within groups: authorised mark to market basis of accounting 30

- 30 Paragraph 28 does not apply where the transferor company uses an authorised mark to market basis of accounting as respects the derivative contract in question, but in any such case the amount to be brought into account by the transferee company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the fair value of the derivative contract as at the date of transfer to the transferee company. 35

Derivative contracts with non-residents

- 31 (1) This paragraph applies in relation to a company where, as a result of any transaction, – 40
- (a) the company and a non-resident both become party to a derivative contract,
- (b) the company becomes party to a derivative contract to which a non-resident is party, or

-
- (c) a non-resident becomes party to a derivative contract to which the company is party.
- (2) For each accounting period for any part of which the company and the non-resident are both party to a derivative contract, the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule as respects the derivative contract shall not include, in a case where that contract makes provision for notional interest payments, any relevant debit arising in relation to that contract. 5
- (3) For the purposes of sub-paragraph (2) the amount of a relevant debit shall be computed by determining, as regards that accounting period, the amount (if any) by which— 10
- (a) the aggregate of any notional interest payments made by the company to the non-resident while the company and the non-resident are both party to the derivative contract, exceeds
- (b) the aggregate of any notional interest payments made by the non-resident to the company during that time. 15
- (4) For the purposes of sub-paragraphs (2) and (3) a notional interest payment is any payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified. 20
- (5) Sub-paragraph (2) shall not apply where the company is a bank, building society, financial trader or recognised clearing house and—
- (a) the company is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and 25
- (b) it is party to the derivative contract otherwise than as agent or nominee of another person.
- (6) Sub-paragraph (2) shall not apply where— 30
- (a) the non-resident is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and
- (b) he is party to the derivative contract otherwise than as agent or nominee of another person.
- (7) Sub-paragraph (2) shall not apply where arrangements made in relation to the territory in which the non-resident is resident— 35
- (a) have effect by virtue of section 788 of the Taxes Act 1988, and
- (b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).
- (8) Where the non-resident is party to the contract as agent or nominee of another person, sub-paragraph (7) shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident. 40
- (9) In this paragraph— 45
- “non-resident” means a person who is not resident in the United Kingdom;
- “recognised clearing house” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (c. 8).

PART 7

COLLECTIVE INVESTMENT SCHEMES

Authorised unit trusts: capital profits and losses

- 32 (1) Where any profits or losses arising to an authorised unit trust from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15. 5
- (2) For the purposes of this paragraph, capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under – 10
- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period. 15
- (4) For the purposes of sub-paragraph (3), the Statement of Recommended Practice used for an accounting period is – 20
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised, or 25
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to authorised unit trust schemes, as from time to time modified, amended or revised. 30

Open-ended investment companies: capital profits and losses

- 33 (1) Where any profits or losses arising to an open-ended investment company from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15. 35
- (2) For the purposes of this paragraph, capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under –
- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”, 40
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period. 45

- (4) For the purposes of sub-paragraph (3), the Statement of Recommended Practice used for an accounting period is –
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised, or 5
 - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to open-ended investment companies issued by the Financial Services Authority, as from time to time modified, amended or revised. 10

Power to amend paragraphs 32 and 33

- 34 (1) The Treasury may by order amend paragraph 32 or 33 so as to alter the definition of capital profits or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice. 15
- (2) The power to make an order under this paragraph includes power –
- (a) to make different provision for different cases, and
 - (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment). 20

Distributing offshore funds

- 35 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining what, for any period, would be the total profits of an offshore fund are to include the assumptions in sub-paragraphs (2) and (3). 25
- (2) The first assumption is that this Schedule does not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund. 30
- (3) The second assumption is that for the purposes of corporation tax the profits and losses that are to be taken to arise from the derivative contracts of an offshore fund are to be computed –
- (a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and 35
 - (b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment.
- (4) In this paragraph “unauthorised unit trust” means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988. 40

Contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds

- 36 (1) This paragraph applies in relation to a relevant contract to which a company is party in an accounting period if – 45

- (a) it is not a derivative contract for the purposes of this Schedule, and
 - (b) its underlying subject matter consists wholly or partly of a holding which is, in that period, a relevant holding.
- (2) Where this paragraph applies in relation to a relevant contract of a company in an accounting period – 5
- (a) the Corporation Tax Acts shall have effect for that period (and any succeeding accounting period in which the relevant contract is a relevant contract of the company) as if the relevant contract were a derivative contract, and
 - (b) the accounting method to be used as regards the relevant contract for that period (and any such succeeding period) shall be an authorised mark to market basis of accounting. 10
- (3) For the purposes of this paragraph a person holds a relevant holding in an accounting period if, at any time in that period, he holds – 15
- (a) any rights under a unit trust scheme,
 - (b) any shares in an open-ended investment company, or
 - (c) any relevant interests in an offshore fund,
- and there is a time in that period when that scheme, company or fund fails to satisfy the non-qualifying investments test.
- (4) For the purposes of this paragraph – 20
- (a) “a relevant interest in an offshore fund” has the same meaning as in paragraph 7 of Schedule 10 to the Finance Act 1996 (c. 8), and
 - (b) a unit trust scheme, open-ended investment company or offshore fund fails to satisfy the non-qualifying investments test if it fails to satisfy the test in paragraph 8 of that Schedule. 25

Contract which becomes contract to which paragraph 36 applies

- 37 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any relevant contract of a company.
- (2) The first condition is that –
- (a) the company is party to the relevant contract in two successive accounting periods (“the first and second accounting periods”), and
 - (b) paragraph 36 applies in relation to that relevant contract for the second accounting period but not the first. 30
- (3) The second condition is that the relevant contract was, immediately before the beginning of the second accounting period, a chargeable asset. 35
- (4) Where an opening valuation of the relevant contract falls to be made at the beginning of the second accounting period (for the purposes of bringing an amount into account for that period on a mark to market basis of accounting), the value of that contract at that time shall be taken for the purpose of the opening valuation to be equal to whatever, in relation to a disposal immediately before the end of the first accounting period, would have been taken to be the market value of that contract for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12). 40
- (5) When the company ceases to be a party to the relevant contract it shall bring into account, for the accounting period in which it ceased to be a party to that contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption – 45

- (a) that it had made a disposal of the asset immediately before the beginning of the second accounting period, and
- (b) that the disposal had been for a consideration equal to the value (if any) given to the relevant contract in the accounts of the company at the end of the first accounting period. 5
- (6) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies). 10

Investment trusts and venture capital trusts: capital reserves

- 38 (1) Where any profits or losses arising to an investment trust from a derivative contract for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period, those profits and losses must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15. 15
- (2) Where any profits or losses arising to a venture capital trust from a derivative contract for an accounting period – 20
- (a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or
- (b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice, 25
- those profits and losses must not be brought into account as credits or debits for the purposes of this Schedule, notwithstanding paragraph 15.
- (3) For the purposes of this paragraph, the Statement of Recommended Practice used for an accounting period is – 30
- (a) in relation to any accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or 35
- (b) in relation to any accounting period for which it is permitted to be used, any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

Investment trusts: approval for purposes of section 842 of the Taxes Act 1988 40

- 39 (1) For the purpose of determining whether a company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities. 45
- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought

into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company.

Venture capital trusts: approval for purposes of section 842AA of the Taxes Act 1988 5

- 40 (1) For the purpose of determining whether a company may be approved for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) for any accounting period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities. 10
- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company. 15

PART 8

INSURANCE AND MUTUAL TRADING COMPANIES

Application of Schedule to insurance and mutual trading companies

- 41 (1) This Schedule shall apply in relation to insurance and mutual trading companies as it applies in relation to other companies. 20
- (2) Sub-paragraph (1) is subject to paragraphs 42 and 43.

Application of Part 1 of Schedule 11 of the Finance Act 1996

- 42 (1) Part 1 of Schedule 11 of the Finance Act 1996 (special provision with respect to loan relationships for insurance companies) shall have effect (subject to sub-paragraphs (2) to (4)) in relation to derivative contracts as it has effect in relation to loan relationships. 25
- (2) Any provision of that Part of that Schedule which applies only to debtor relationships (within the meaning of Chapter 2 of Part 4 of that Act) shall not have effect in relation to derivative contracts for the purposes of sub-paragraph (1). 30
- (3) That Part of that Schedule shall have effect in its application in relation to derivative contracts as if—
- (a) references to Chapter 2 of Part 4 of the Finance Act 1996 were references to this Schedule; 35
 - (b) references to section 80(5) of that Act were references to paragraph 1(2) of this Schedule,
 - (c) references to section 82(2) of that Act were references to paragraph 14(2) of this Schedule, and
 - (d) references to credits and debits given in respect of a loan relationship by Chapter 2 of Part 4 of that Act were references, respectively, to the credits and debits given in respect of a derivative contract by this Schedule. 40

- (4) In the application of that Part of that Schedule in the case of any contract of an insurance company –
- (a) which is a derivative contract by virtue of paragraph 5, and
 - (b) to which the insurance company is party for the purposes of any life assurance business, or any category of life assurance business, carried on by it or partly for those purposes,
- any credits or debits given in respect of the contract shall not, to the extent that they are referable to that business or any category of that business, be brought into account in accordance with that Schedule as it has effect by virtue of this paragraph (and accordingly the provisions applicable apart from this Schedule shall, to that extent, apply for the purposes of computing the profits of an insurance company for the purposes of corporation tax).

Non-life mutual business

- 43 (1) This paragraph applies in relation to any contract of a mutual trading company –
- (a) which is a derivative contract by virtue of paragraph 5, and
 - (b) to which the mutual trading company is party, at any time in an accounting period, for the purposes of any non-life mutual business carried on by it or partly for those purposes.
- (2) Where this paragraph applies in relation to a contract, this Schedule shall have effect in relation to the contract subject to sub-paragraph (3).
- (3) To the extent that the credits or debits which, but for this sub-paragraph, fall to be brought into account in respect of the contract for that period are referable to any non-life mutual business they shall not be brought into account under this Schedule.
- (4) The extent to which any credits or debits are referable to the purposes of any non-life mutual business or to other purposes shall be determined by apportioning those credits and debits on a just and reasonable basis.

PART 9

MISCELLANEOUS 30

Derivative contracts ceasing to be held for purposes of trade

- 44 (1) This paragraph applies where –
- (a) a company is party to a relevant contract which is a derivative contract by virtue of paragraph 5 (contracts entered into or acquired by a company for the purposes of a trade carried on by it), and
 - (b) the purposes for which the company entered into or acquired the relevant contract cease at any time (“the relevant time”) to be the company’s purposes in relation to that relevant contract, but
 - (c) the company continues to be party to the relevant contract after the relevant time.
- (2) Where this paragraph applies, the company shall be deemed –
- (a) to have disposed of the relevant contract immediately before the relevant time for a consideration of an amount equal to the fair value of the contract at the relevant time, and

- (b) to have reacquired it immediately after that time for the same consideration.

Contracts becoming held for purposes of trade

- 45 (1) This paragraph applies where a relevant contract of a company –
- (a) whose underlying subject matter consists, or is treated as consisting, wholly of –
 - (i) shares in a company,
 - (ii) rights of a unit holder under a unit trust scheme, or
 - (iii) assets representing a loan relationship to which either section 92 or 93 of the Finance Act 1996 (c. 8) applies,
 - (b) which is a chargeable asset, and
 - (c) which was entered into or acquired by the company otherwise than for the purposes of a trade carried on by it,
- is at any time appropriated by the company for the purposes of a trade carried on by it.
- (2) Where this paragraph applies –
- (a) section 161 of the Taxation of Chargeable Gains Act 1992 (c. 12) (appropriations to and from stock) shall have effect in relation to the appropriation of that contract, but
 - (b) the company may not make an election under subsection (3) of that section in relation to that appropriation.
- (3) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (1)(a).

Contracts where part of underlying subject matter of excluded type

- 46 (1) This paragraph applies to a relevant contract of a company –
- (a) which is an option or future,
 - (b) which satisfies the requirements of paragraph 3 (accounting requirements etc),
 - (c) whose underlying subject matter falls within sub-paragraph (2).
- (2) The underlying subject matter of a relevant contract falls within this sub-paragraph if it consists of –
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (f) of sub-paragraph (2) of paragraph 4, and
 - (b) underlying subject matter other than that referred to in paragraph (a).
- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely –

-
- (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and
 - (b) a relevant contract of the company whose underlying subject matter consists of the underlying subject matter referred to in sub-paragraph (2)(b). 5
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made.
- (5) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of any one or more of the excluded types of property referred to in sub-paragraph (2)(a). 10

Contracts where underlying subject matter of different excluded types

- 47 (1) This paragraph applies to a relevant contract of a company – 15
- (a) which is an option or future,
 - (b) which satisfies the requirements of paragraph 3 (accounting requirements etc), and
 - (c) whose underlying subject matter falls within sub-paragraph (2).
- (2) The underlying subject matter of the relevant contract falls within this sub-paragraph if it consists, or is treated as consisting, wholly of – 20
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (c) of sub-paragraph (2) of paragraph 4, and
 - (b) any one or more of the excluded types of property falling within paragraphs (d) to (f) of that sub-paragraph. 25
- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely –
- (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and 30
 - (b) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(b).
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made. 35
- (5) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the excluded types of property referred to in paragraphs (a) and (b) of sub-paragraph (2). 40
- (6) If a relevant contract of a company is one to which this paragraph applies in consequence of the application of paragraph 9 (as described in sub-paragraph (5)), any underlying subject matter of the contract which is subordinate or of small value and which is disregarded in accordance with that paragraph shall be apportioned in accordance with sub-paragraph (4). 45
- But if and so far as the underlying subject matter of a relevant contract is disregarded in accordance with paragraph 9 by reason of being subordinate in relation to such property as is referred to in paragraph (a) or, as the case

may be, paragraph (b) of sub-paragraph (3), it shall be apportioned accordingly.

- (7) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of— 5
- (a) any one or more of the excluded types of property falling within paragraphs (a) to (c) of sub-paragraph (2) of paragraph 4, or
 - (b) any one or more of the excluded types of property falling within paragraphs (d) to (f) of that sub-paragraph.

Election to treat contract as two assets 10

- 48 (1) This paragraph applies to a relevant contract of a company if it would, but for an election under this paragraph, be a derivative contract to which paragraph 7 applies.
- (2) Where this paragraph applies to a relevant contract of a company, the company may elect that its relevant contract shall be treated for the purposes of the Corporation Tax Acts as if it were— 15
- (a) a creditor relationship of the company which is a relevant zero coupon bond, and
 - (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the relevant contract to which this paragraph applies. 20
- (3) For the purposes of sub-paragraph (2) a relevant zero coupon bond is a zero coupon bond—
- (a) issued at the time when the consideration for entering into, or acquiring, the relevant contract to which this paragraph applies was payable by the company, 25
 - (b) falling to be redeemed—
 - (i) on the date on which that relevant contract falls to be performed, or
 - (ii) in a case where that relevant contract may fall to be performed on more than one date, on the date which is the last of those dates, and 30
 - (c) issued at a price equal to the amount that would have been the market value of a zero coupon bond—
 - (i) issued at that time, 35
 - (ii) falling to be redeemed on that date or, as the case may be, on that last date, and
 - (iii) producing, by the time of its redemption, an amount equal to the amount which is the guaranteed amount in relation to that relevant contract. 40
- (4) The only accounting method authorised for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) for use by a company as respects a creditor relationship arising under sub-paragraph (2)(a) shall be an authorised mark to market basis of accounting.
- (5) None of paragraphs 6 to 8 shall apply to an option arising under paragraph (2)(b). 45
- (6) For the purposes of giving effect to sub-paragraph (2) all such apportionments as are just and reasonable shall be made.

- (7) An election under sub-paragraph (2) in relation to a relevant contract –
- (a) may only be made within the period of two years following the end of the company’s first accounting period in which it is party to the relevant contract;
 - (b) has effect for that accounting period and all subsequent accounting periods of the company; and 5
 - (c) is irrevocable.
- (8) For the purposes of this paragraph a “zero coupon bond” is a security –
- (a) whose issue price is less than the amount payable on redemption, and 10
 - (b) which does not provide for any amount to be payable by way of interest.
- (9) For the purposes of this paragraph “market value” has the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12).

Partnerships involving companies 15

- 49 (1) This paragraph applies where –
- (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
 - (b) any of those persons is a company (a “company partner”); and
 - (c) the firm is party to a contract which is a derivative contract or would be a derivative contract if the firm were a company. 20
- (2) In any such case –
- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no credits or debits shall be brought into account under this Schedule in respect of the contract; but 25
 - (b) credits and debits shall be brought into account under this Schedule in respect of the contract in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) are satisfied. 30
- (3) The credits and debits to be brought into account as mentioned in sub-paragraph (2)(b) shall be determined separately in the case of each company partner.
- (4) For the purpose of determining those credits and debits in the case of any particular company partner – 35
- (a) the contract entered into or acquired by the firm shall be treated as if it were instead entered into or acquired by that company partner, for the purposes of the trade, profession or business which that company partner carries on, 40
 - (b) anything done by or in relation to the firm in connection with the contract shall be treated as done by or in relation to the company partner, and
 - (c) to the extent that any exchange gains or losses arising from the contract are carried to or sustained by a reserve maintained by the firm and are set off by or against another amount as described in paragraph 16(4), the exchange gains or losses shall to that extent be 45

treated as carried to or sustained by such a reserve maintained by the company partner and set off by or against another amount, and credits and debits (the “gross credits and debits”) shall be determined accordingly.

- (5) The credits and debits to be brought into account under this Schedule pursuant to sub-paragraph (2)(b) in the case of any particular company partner shall be that company partner’s appropriate share of the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner. 5
- (6) For the purposes of sub-paragraph (5), the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if— 10
- (a) the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner fell to be apportioned between the partners; and 15
 - (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.

Partnerships involving companies: application of accounting methods 20

- 50 (1) This paragraph has effect where, in accordance with paragraph 49, credits and debits in respect of a contract of a firm are to be brought into account under this Schedule by a company partner for any accounting period of that company partner.
- (2) Where this paragraph has effect, paragraph 18 shall apply in relation to the contract, subject to sub-paragraph (3). 25
- (3) Where as respects any accounting period or any part of an accounting period—
- (a) the credits and debits in respect of the contract, which fall to be brought into account under this Schedule by the company partner in accordance with paragraph 49, are not brought into account by the company partner for the purposes of its statutory accounts, but 30
 - (b) the company partner brings its share in the profits or loss of the firm into account on a mark to market basis of accounting for the purposes of its statutory accounts, 35
- the company partner must use in relation to that period or, as the case may be, that part of a period, an authorised mark to market basis of accounting in relation to the contract for the purposes of this Schedule.
- (4) For the purposes of this paragraph “company partner” and “firm” have the same meanings as in paragraph 49. 40

Prevention of deduction of tax

- 51 Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, where the profits and losses arising from a derivative contract of a company are computed in accordance with this Schedule, the company shall not be required, on making a payment under the contract, to deduct out of it any sum representing an amount of income tax on it. 45

PART 10

INTERPRETATION

Statutory accounts

- 52 (1) In this Schedule “statutory accounts”, in relation to a company, means –
- (a) any accounts relating to that company that are drawn up in accordance with any requirements of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) that apply in relation to that company; 5
 - (b) any accounts relating to that company that are drawn up in accordance with any requirements of regulations under section 70 of the Friendly Societies Act 1992 (c. 40) that apply in relation to that company; 10
 - (c) any accounts relating to that company which are accounts to which Part 1 of Schedule 21C to the Companies Act 1985 or Part 1 of Schedule 21D to that Act applies; 15
 - (d) in the case of a company which –
 - (i) is not subject to such requirements as are mentioned in paragraphs (a) or (b), and
 - (ii) is a company in whose case there are no accounts for the period in question that fall within paragraph (c),
 any accounts relating to the company drawn up in accordance with requirements imposed in relation to that company under the law of its home state; and 20
 - (e) in the case of a company which –
 - (i) is not subject to any such requirements as are mentioned in paragraph (a), (b) or (d), and 25
 - (ii) is a company in whose case there are no accounts for the period in question that fall within paragraph (c),
 the accounts relating to the company that most closely correspond to the accounts which, in the case of a company formed and registered under the Companies Act 1985, are required under that Act. 30
- (2) For the purposes of sub-paragraph (1), the home State of a company is the country or territory under whose law the company is incorporated.

Derivative and relevant contracts of person

- 53 (1) For the purposes of this Schedule references to a relevant contract of a person are references to a relevant contract entered into or acquired by a person; and references to a person’s being party to a relevant contract shall be construed accordingly. 35
- (2) For the purposes of sub-paragraph (1), a relevant contract is acquired by a person if that person becomes entitled to the rights, and subject to the liabilities, under the relevant contract whether by assignment or otherwise. 40
- (3) Where –
- (a) an accruals basis of accounting is used by a company in respect of a relevant contract entered into or acquired by it, and
 - (b) in accordance with that basis of accounting, provision continues to be made as regards the contract in accounting periods after the 45

- accounting period in which the company ceases to be party to the contract,
references in this Schedule to the company being party to the contract in an accounting period shall be construed as references to the company being party to the contract in the accounting period to which the provision relates. 5
- (4) For the purposes of the Corporation Tax Acts references to a person’s derivative contracts and to a person’s being party to a derivative contract shall be construed accordingly.

General interpretation

- 54 (1) In this Schedule – 10
- “authorised accounting method”, “authorised accruals basis of accounting” and “authorised mark to market basis of accounting” shall be construed in accordance with paragraph 17;
- “bank” means any of the following – 15
- (a) the Bank of England;
- (b) any person falling within section 840A(1)(b) of the Taxes Act 1988; and
- (c) any firm falling within section 840A(1)(c) of that Act;
- “contract for differences” shall be construed in accordance with paragraph 12; 20
- “contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
- “derivative contract” shall be construed in accordance with paragraph 2; 25
- “exchange gain” and “exchange loss” shall be construed in accordance with sub-paragraphs (2) and (3);
- “fair value” has the meaning given by paragraph 17;
- “future” has the meaning given by paragraph 12;
- “insurance company” means a company which effects or carries out contracts of insurance; 30
- “intangible fixed assets” has the meaning given by paragraph 12;
- “investment trust” is a company approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period; 35
- “life assurance business” has the same meaning as in section 431 of the Taxes Act 1988;
- “long-term insurance business” means business which consists of the effecting and carrying out of contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and “contract of long-term insurance” means any contract which falls within that Part of that Schedule; 40
- “non-life mutual business” means any mutual trading, or any mutual insurance or other mutual business, which (in either case) is not life assurance business; 45
- “option” has the meaning given by paragraph 12;
- “related transaction” has the meaning given by paragraph 15;

- “relevant contract” has the meaning given by paragraph 2;
- “shares”, in relation to a company, has (except in paragraphs 39 and 40) the meaning given by paragraph 12;
- “statutory accounts” has the meaning given by paragraph 52;
- “UK company” means a company incorporated or formed under the law of a part of the United Kingdom; 5
- “underlying subject matter” has the meaning given by paragraph 11;
- “warrant” has the meaning given by paragraph 12.
- (2) References in this Schedule to exchange gains or exchange losses, in the case of any company, are references respectively to – 10
- (a) profits or gains, or
- (b) losses,
- which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company. 15
- If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Schedule an exchange gain of nil shall be taken to arise in the case of that comparison.
- (3) A reference to an exchange gain or loss from a company’s derivative contract is a reference to an exchange gain or loss arising to a company in relation to a derivative contract of the company. 20
- (4) In this Schedule “financial trader” means –
- (a) any person who –
- (i) falls within section 31(1)(a), (b) or (c) of the Financial Services and Markets Act 2000 (c. 8), and 25
- (ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544); or
- (b) any person not falling within paragraph (a) who is approved by the Board for the purposes of this paragraph. 30

SCHEDULE 27

Section 82

DERIVATIVE CONTRACTS: MINOR AND CONSEQUENTIAL AMENDMENTS

The Taxes Act 1988

- 1 The Taxes Act 1988 is amended as follows. 35
- 2 In section 15(1) (Schedule A), in paragraph 2(3) of Schedule A (profits of Schedule A business computed without regard to certain items), for the third indent (which relates to qualifying payments within Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)), substitute –
- “– credits or debits within Schedule 26 to the Finance Act 40
2002 (derivative contracts).”.
- 3 (1) In section 128 (gains arising in course of dealing in commodity and financial futures etc), in the first sentence –

- (a) at the beginning insert “(1)”,
 - (b) after “(1)”, as so inserted, insert “For the purposes of income tax,”, and
 - (c) for “apart from this section” substitute “apart from this subsection”.
- (2) At the end of the first sentence of that section (as amended by sub-paragraph (1)), insert—
 - “**(2)** For the purposes of corporation tax, any gain arising to any company in the course of dealing in financial futures or in qualifying options, which apart from this subsection would constitute profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, shall not be chargeable to tax under Case V or VI of Schedule D.”.
- (3) At the beginning of the second sentence (and after subsection (2) as inserted by sub-paragraph (2)) insert “(3)”.
- 4 (1) In section 399 (dealings in commodity futures etc: withdrawal of loss relief), in subsection (1) (losses, arising in course of dealing where gains would constitute non-trading profits or gains chargeable under Schedule D for the purposes of the Tax Acts, not to be allowable against profits or gains chargeable to tax under Schedule D) —
 - (a) for “section 128 above” substitute “section 128(1) above”, and
 - (b) for “for the purposes of the Tax Acts” substitute “for the purposes of the Income Tax Acts”.
- (2) After subsection (1A) of that section insert—
 - “**(1B)** If, apart from section 143(1) of the 1992 Act or section 128(2) above, gains arising in the course of dealing in financial futures or in qualifying options would constitute, for the purposes of the Corporation Tax Acts, profits and gains chargeable to tax under Case V or VI of Schedule D, then any loss arising in the course of that dealing shall not be allowable against profits and gains which are chargeable to tax under Case V or VI of Schedule D.”.
- 5 In section 440 (transfers between categories of assets held by insurance companies) after subsection (2A) (treatment of deemed disposal and re-acquisition of loan relationships) insert—
 - “**(2B)** Where under subsection (1) or (2) above there is a deemed disposal and re-acquisition of any derivative contract of a company, any authorised accounting method used as respects that contract for the purposes of Schedule 26 to the Finance Act 2002 shall be applied as respects that contract as if the contract that is deemed to be disposed of and the contract that is deemed to be re-acquired were different assets.”.
- 6 Omit section 468AA (authorised unit trusts: futures and options).
- 7 (1) Section 468L (interest distributions) is amended as follows.
 - (2) In subsection (9) (meaning of “qualifying investments”) after paragraph (e) insert—
 - “(f) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (e) above;

- (g) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.”.
- (3) In subsection (11) (assumption as to investments of other authorised unit trust which are to be regarded as qualifying investments) after “within paragraphs (a) to (c)” insert “, (f) and (g)”.
- (4) After subsection (12G) insert –
- “(12H) For the purposes of this section –
- (a) “contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;
- (b) “derivative contract” means –
- (i) contracts which are derivative contracts within the meaning of that Schedule, and
- (ii) contracts which are, in the accounting period in question, treated as if they were derivative contracts by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds); and
- (c) “underlying subject matter” has the same meaning as in paragraph 11 of that Schedule.”.
- 8 In section 501A (supplementary charge in respect of ring fence trades) in subsection (5) (computation of financing costs) for paragraph (c) (any trading profit or loss, under Chapter 2 of Part 4 of the Finance Act 1994 (c. 9) (interest rate and currency contracts), in relation to debt finance) substitute –
- “(c) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts) in relation to debt finance;”.
- 9 In section 768B (change in ownership of investment company: deductions generally) –
- (a) in subsection (10) (restriction of debits brought into account in respect of loan relationships) at end insert “(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)”, and
- (b) in subsection (13) (modified application of section 768) after “its loan relationships” insert “(or its derivative contracts by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)”.
- 10 In section 768C (deductions: asset transferred within group) in subsection (9) (restriction of debits to be brought into account) at end insert “(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)”.
- 11 In section 798B (restriction of relief on certain interest and dividends: meaning of “financial expenditure”), in subsection (5) (meaning of “qualifying losses”), for paragraph (b) (losses brought into account for purposes of Chapter 2 of Part 4 of the Finance Act 1994) substitute –
- “(b) the amount (if any) by which debits brought into account in respect of a derivative contract for the purposes of Schedule

- 26 to the Finance Act 2002 (derivative contracts) exceed credits so brought into account;”.
- 12 (1) Section 807A (disposals and acquisitions of company loan relationships with or without interest) is amended as follows.
- (2) In subsection (2)(b)(ii) (foreign tax to be disregarded so far as attributable to qualifying payment within Chapter 2 of Part 4 of the Finance Act 1994 (c. 9) relating to a time when a company is not party to a contract) –
- (a) for “relevant qualifying payment” substitute “relevant payment”, and
- (b) for “the interest rate or currency contract concerned” substitute “the derivative contract concerned”. 10
- (3) In subsection (7) (definitions) insert the following definition at the appropriate place –
- ““relevant payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified;”.
- (4) In that subsection, omit the definition of “relevant qualifying payment”. 15
- 13 In section 834(1) (interpretation of the Corporation Tax Acts) insert the following definition at the appropriate place –
- ““derivative contract” has the same meaning as it has for the purpose of Schedule 26 to the Finance Act 2002;”.
- 14 (1) Schedule 5AA (guaranteed returns on transactions in futures and options) is amended as follows. 25
- (2) In paragraph 1 (profits and gains of transactions with guaranteed returns chargeable to tax under Schedule 5AA of the Taxes Act 1988) –
- (a) omit paragraphs (b) and (c) of sub-paragraph (2) (exceptions for profits and gains arising from a qualifying contract and profits and gains arising to an authorised unit trust), 30
- (b) omit sub-paragraph (3) (definitions of “qualifying company” and “qualifying contract”),
- (c) in sub-paragraph (5) (when in loss in transaction sustained for purposes of sections 392 and 396 of the Taxes Act 1988), omit “and 396”, 35
- (d) in sub-paragraph (6) (specified amounts not to be brought into account for purposes of income tax, corporation tax or capital gains tax except under Schedule 5AA or section 392 or 396) –
- (i) omit “, corporation tax”, and
- (ii) omit “or 396”, and 40
- (e) omit sub-paragraph (7) (bringing receipts into account in any Case I computation made in respect of life insurance).
- (3) In paragraph 2 (transactions to which Schedule 5AA applies) omit sub-paragraph (3) (application of Schedule to disposals of futures or options to which section 93A of the Finance Act 1996 (c. 8) refers). 45
- (4) In paragraph 4 (meaning of disposals of futures or options) omit sub-paragraph (4A) (application of paragraph to associated transactions to which section 93A of the Finance Act 1996 refers).

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- (5) In paragraph 4A (futures running to delivery and options exercised) –
- (a) in sub-paragraph (5)(b) (loss in deemed transaction brought into account for purposes of section 392 or 396 of the Taxes Act 1988 in accordance with paragraph 1(5) of Schedule 5AA), omit “or 396”, and
 - (b) omit sub-paragraph (10A) (application of paragraph to associated transactions to which section 93A of the Finance Act 1996 (c. 8) refers). 5
- (6) In paragraph 6 (meaning of related transactions) omit sub-paragraph (3A) (application of paragraph to associated transactions to which section 93A of the Finance Act 1996 refers). 10
- (7) Omit paragraph 9 (apportionment in the case of insurance companies).
- 15 (1) Schedule 28AA (provision not at arm’s length) is amended as follows.
- (2) In paragraph 8 (foreign exchange gains and losses and financial instruments), in sub-paragraph (1) (exceptions) –
- (a) after “sub-paragraph (3)” insert “and sub-paragraph (4)”, and 15
 - (b) for paragraph (b) (which relates to Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) substitute –
 - “(b) Schedule 26 to the Finance Act 2002 (derivative contracts) in respect of exchange gains and losses (as defined in paragraph 54 of that Schedule),” 20
- (3) In that paragraph, after sub-paragraph (3) (which is inserted by Schedule 23 to this Act) insert –
- “(4) Sub-paragraph (1) above shall not affect so much of paragraph 27 of Schedule 26 to the Finance Act 2002 (derivative contracts: exchange gains or losses where derivative contract not on arm’s length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if a company were not party to a derivative contract or as if the terms of the contract to which it is party were different.” 25
- The Finance Act 1994* 30
- 16 In section 226 (provisions of the Finance Act 1993 (c. 34) and Finance Act 1994 which are not to apply in the case of Lloyd’s underwriters) for subsection (3) (contracts and options in premium trust fund of corporate member not to be qualifying contracts for purposes of Chapter 2 of Part 4 of the Finance Act 1994) substitute – 35
- “(3) No relevant contract (within the meaning of Schedule 26 to the Finance Act 2002) forming part of a premium trust fund of a corporate member shall be a derivative contract.”
- The Finance Act 1996*
- 17 The Finance Act 1996 is amended as follows. 40
- 18 (1) Section 93A (loan relationships linked to the value of chargeable assets: guaranteed returns) is amended as follows.
- (2) In subsection (1) (creditor relationships to which section applies) –

- (a) in paragraph (a) for “a disposal of futures or options” substitute “a derivative contract falling within paragraph 6 of Schedule 26 to the Finance Act 2002 (“an associated derivative contract”); and
 - (b) in paragraph (b) for “the disposals of futures or options” substitute “the associated derivative contracts”. 5
- (3) In subsection (2) (transactions designed to produce guaranteed return) –
 - (a) for “disposals of futures or options” substitute “associated derivative contracts”, and
 - (b) for “any one or more of the disposals” substitute “any one or more of the associated derivative contracts”. 10
- (4) In subsection (3) (production of a guaranteed return) –
 - (a) for “any one or more of the disposals of futures or options” substitute “any one or more of the associated derivative contracts”, and
 - (b) omit paragraph (a).
- (5) In subsection (5) (meaning of “underlying subject matter”), for paragraph (b) substitute –
 - “(b) the references, in relation to an associated derivative contract, to the underlying subject matter are to be construed in accordance with paragraphs 6(2)(a) and 11 of Schedule 26 to the Finance Act 2002.”. 15 20
- (6) Omit subsection (7) (use of terms appearing in Schedule 5AA to the Taxes Act 1988).
- 19 (1) Section 101 (financial instruments) is amended as follows.
 - (2) In subsection (1) (Chapter 2 of Part 4 of Finance Act 1994 not to apply to profit and loss on certain financial instruments brought into account under Chapter 2 of Part 4 of Finance Act 1996) –
 - (a) for “Chapter II of Part IV of the Finance Act 1994 (provisions relating to certain financial instruments)” substitute “Schedule 26 to the Finance Act 2002 (provisions relating to derivative contracts)”,
 - (b) for “in accordance with that Chapter” substitute “in accordance with that Schedule”, and 30
 - (c) for “a qualifying contract” substitute “a derivative contract”.
 - (3) Omit subsections (2) to (6).
- 20 (1) Schedule 10 (loan relationships: collective investment schemes) is amended as follows. 35
 - (2) In paragraph 8 (non-qualifying investments test) in sub-paragraph (2) (meaning of “qualifying investments”) after paragraph (d) insert –
 - “(e) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (d) above; 40
 - (f) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.”.
 - (3) In that paragraph, in sub-paragraph (4) (relevant assumption in a case where a qualifying investment is a qualifying holding) after “within paragraphs (a) to (c)” insert “, (e) and (f)”. 45
 - (4) In that paragraph, after sub-paragraph (7D) insert –

- “(7E) For the purposes of this paragraph—
- (a) “contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;
 - (b) “derivative contract” means—
 - (i) contracts which are derivative contracts within the meaning of that Schedule, and 5
 - (ii) contracts which are, in the accounting period in question, treated as if they were derivative contracts by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds); and 10
 - (c) “underlying subject matter” has the same meaning as in paragraph 11 of that Schedule.”.
- 21 Omit Schedule 12 (meaning of debt contract or option). 15

The Finance Act 2000

- 22 The Finance Act 2000 (c. 17) is amended as follows.
- 23 (1) Schedule 22 (tonnage tax) is amended as follows.
- (2) In paragraph 50 (income which, otherwise than under Schedule 22 of the Finance Act 2000, falls to be taken into account as trading income from trade consisting of tonnage tax activities) in sub-paragraph (2), for paragraph (c) substitute— 20
 - “(c) any credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).”.
 - (3) In paragraph 63 (ring-fencing of accounting periods where company is tonnage tax company: meaning of “finance costs”) in sub-paragraph (2), for paragraph (b) substitute—
 - “(b) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts), in relation to debt finance;”.

The Finance Act 2002

- 24 The Finance Act 2002 is amended as follows.
- 25 Section 77 (which amends the provision made by Schedule 5AA of the Taxes Act 1988 as regards corporation tax in relation to guaranteed returns on transactions involving futures and options, provision as regards which is made in Schedule 26 in relation to accounting periods beginning on or after 1st October 2002) shall cease to have effect. 35
- 26 In Schedule 29 (taxation of intangible fixed assets) in paragraph 75 (which provides for the Schedule not to apply to financial assets) for sub-paragraph (3)(b) (financial assets to include qualifying contracts within Chapter 2 of Part 4 of the Finance Act 1994) substitute— 40
 - “(b) derivative contracts (see Part 2 of Schedule 26).”.

SCHEDULE 28

Section 82

DERIVATIVE CONTRACTS: TRANSITIONAL PROVISIONS ETC

Anti-avoidance: change of accounting period

- 1 (1) This paragraph applies where –
 - (a) a company changes its accounting date in such a way that an accounting period of the company, which begins on or after 1st October 2001, ends before 30th September 2002; and 5
 - (b) the change of accounting date is or was made for the purpose, or for purposes which include the purpose, specified in sub-paragraph (2).
- (2) The purpose is that of securing, in the case of any subsequent accounting period beginning before 1st October 2002, – 10
 - (a) that where an amount, or a bigger amount, would have fallen to be brought into account as a credit under Schedule 26 if that Schedule had had effect in relation to the period, no amount, or a smaller amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994 (c. 9); or 15
 - (b) that where no amount, or a smaller amount, would have fallen to be brought into account as a debit under Schedule 26 if that Schedule had had effect in relation to the period, an amount or a bigger amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994. 20
- (3) Where this paragraph applies, Schedule 26 shall have effect in relation to the subsequent accounting period mentioned in sub-paragraph (2) as if it were an accounting period beginning on or after 1st October 2002.
- (4) For the purposes of this paragraph, references to Schedule 26 include references to – 25
 - (a) section 82(2), and
 - (b) any repeal of any enactment which is consequential on any provision made by or under that Schedule.

Qualifying contracts to which company ceases to be party before commencement day 30

- 2 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company was a party to a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) before its commencement day, but is not a party to it on that commencement day. 35
- (3) The second condition is that, if the company had been a party to the contract on its commencement day, the contract would have been a derivative contract.
- (4) To the extent that amounts have been brought into account in computing, in accordance with Chapter 2 of Part 4 of the Finance Act 1994, the profits or losses accruing to the company from the contract in an old period of the company, they shall not be brought into account again by the company as credits or debits given in respect of that contract for the first new period or any subsequent accounting period of the company by Schedule 26. 40

Qualifying contracts which become derivative contracts

- 3 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day. 5
- (3) The second condition is that the contract—
- (a) was a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, and
- (b) as from that day is a derivative contract. 10
- (4) To the extent that amounts have been brought into account in computing, in accordance with Chapter 2 of Part 4 of the Finance Act 1994, the profits or losses accruing to the company from the contract in an old period of the company, they shall not be brought into account again by the company as credits or debits given in respect of that contract for the first new period or any subsequent accounting period of the company by Schedule 26. 15
- (5) To the extent that amounts would have been brought into account by the company as credits or debits given in respect of that contract for an old period of the company by Schedule 26, if Schedule 26 had had effect in relation to that old period, and were not so brought into account, they shall be so brought into account immediately after the company's commencement day. 20

Contracts which become derivative contracts: chargeable assets

- 4 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company. 25
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, but 30
- (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
- (5) Where this paragraph applies, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceased to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption— 35
- (a) that it had made a disposal of the asset immediately before its commencement day, and 40
- (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company's accounting period immediately before its first new period. 45
- (6) Sub-paragraph (5) has effect subject to sub-paragraph (7).

- (7) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (5) is to be brought into account for the accounting period in which it ceased to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company. 5
- (8) An election under sub-paragraph (7) may only be made within the period of two years following the end of the accounting period in which the company ceased to be a party to the contract. 10
- (9) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies). 15
- (10) This paragraph has effect subject to paragraph 5.

Contracts: election to treat as two assets

- 5 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company. 20
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract –
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but 25
 - (b) as from that day would, but for an election under sub-paragraph (5) of this paragraph, be a derivative contract to which paragraph 7 of Schedule 26 (contracts designed to secure guaranteed amount) applies. 30
- (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
- (5) Where this paragraph applies the company may elect that its contract shall be treated for the purposes of the Corporation Tax Acts as if it were –
- (a) a creditor relationship of the company which is a zero coupon bond (within the meaning of paragraph 48 of Schedule 26), and 35
 - (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the contract to which this paragraph applies;
- and sub-paragraphs (4) to (6) of that paragraph shall apply to a creditor relationship and an option arising under this sub-paragraph as they apply to a creditor relationship and an option arising under paragraph 48(2) of Schedule 26. 40
- (6) An election under sub-paragraph (5) in relation to a contract –
- (a) may only be made within the period of two years following the end of the company's first new period; 45
 - (b) has effect for the company's first new period and all subsequent accounting periods of the company; and

- (c) is irrevocable.
- (7) Where an election under sub-paragraph (5) has been made by a company in relation to a contract, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceased to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption – 5
- (a) that it had made a disposal of the asset immediately before its commencement day, and
- (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company’s accounting period immediately before its first new period. 10
- (8) Sub-paragraph (7) has effect subject to sub-paragraph (9).
- (9) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (7) is to be brought into account for the accounting period in which it ceased to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company. 15 20
- (10) An election under sub-paragraph (9) may only be made within the period of two years following the end of the accounting period in which the company ceased to be a party to the contract.
- (11) For the purposes of this paragraph references to an asset being a chargeable asset shall be construed in accordance with paragraph 4(9). 25
- (12) In this paragraph “option” and “underlying subject matter” have the same meanings as in Schedule 26.

Contracts which become derivative contracts: contracts within Schedule 5AA to the Taxes Act 1988 30

- 6 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (5) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract – 35
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company’s commencement day, but
- (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company’s commencement day, a transaction to which Schedule 5AA to the Taxes Act 1988 applied. 40
- (5) The fourth condition is that, on or after the company’s commencement day, a relevant event occurs.
- (6) For the purposes of this paragraph a relevant event is an event which would, if Schedule 5AA to the Taxes Act 1988 had continued to apply to the contract 45

for the purposes of corporation tax, have given rise to an amount of profits falling to be charged under that Schedule.

- (7) A credit representing that amount of profits (“a relevant credit”) shall be brought into account by virtue of paragraph 14(3) of Schedule 26 for the accounting period in which the relevant event occurs as if it were a non-trading credit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company. 5
- (8) The amount of the relevant credit is the sum of—
- (a) the amount of profits which would have been chargeable under Schedule 5AA to the Taxes Act 1988 if it had continued to apply to the contract, and 10
 - (b) the amount of any debits given by Schedule 26 in respect of the contract for the first new period and any subsequent accounting period ending with the accounting period in which the relevant event occurred, 15
- less the amount of any credits given by Schedule 26 in respect of the contract for those accounting periods.

Interpretation

- 7 For the purposes of this Schedule— 20
- (a) a company’s commencement day is the first day of its first accounting period to begin on or after 1st October 2002,
 - (b) a company’s first new period is its first accounting period to begin on or after that date, and
 - (c) an old period of the company is any accounting period of the company ending before the first day of its first new period. 25

SCHEDULE 29

Section 83(1)

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

PART 1

INTRODUCTION 30

Gains and losses in respect of intangible fixed assets

- 1 (1) A company’s gains in respect of intangible fixed assets are chargeable to corporation tax as income in accordance with this Schedule.
- (2) This Schedule also has effect for determining how a company’s losses in respect of intangible fixed assets are brought into account for the purposes of corporation tax. 35
- (3) Except where otherwise indicated, the amounts to be brought into account in accordance with this Schedule in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter. 40

Intangible assets

- 2 (1) In this Schedule “intangible asset” has the meaning it has for accounting purposes.
- (2) References in this Schedule to an intangible asset include, in particular, any intellectual property. 5
 For this purpose “intellectual property” means –
- (a) any patent, trade mark, registered design, copyright or design right, plant breeders’ rights or rights under section 7 of the Plant Varieties Act 1997 (c. 66),
- (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a), 10
- (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value, or 15
- (d) any licence or other right in respect of anything within paragraph (a), (b) or (c).
- (3) This paragraph is subject to Part 10 (excluded assets).

Intangible fixed assets

- 3 (1) In this Schedule an “intangible fixed asset”, in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company’s activities. 20
- (2) References in this Schedule to an intangible fixed asset include an option or other right –
- (a) to acquire an intangible asset that if acquired would be a fixed asset, 25
 or
- (b) to dispose of an intangible fixed asset.
- (3) Unless otherwise indicated, the provisions of this Schedule apply to an intangible fixed asset whether or not it is capitalised in the company’s accounts. 30
- (4) This paragraph is subject to any such provision of regulations under paragraph 104 (finance leasing etc) as is mentioned in sub-paragraph (2)(a) of that paragraph (assets to be treated as intangible fixed assets of finance lessor).

Goodwill 35

- 4 (1) Except as otherwise indicated, the provisions of this Schedule apply to goodwill as to an intangible fixed asset.
- (2) In this Schedule “goodwill” has the meaning it has for accounting purposes.

Company not drawing up correct accounts

- 5 (1) If a company does not draw up accounts in accordance with generally accepted accounting practice (“correct accounts”) – 40
- (a) the provisions of this Schedule apply as if correct accounts had been drawn up, and

- (b) the amounts referred to in this Schedule as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.
- (2) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Schedule as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period. 5
- (3) The provisions of this paragraph apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct. 10

Reference to consolidated group accounts

- 6 (1) In determining whether a company’s accounts are correct, reference may be made to any view as to –
 - (a) the useful life of an asset, or 15
 - (b) the economic value of an asset,taken for the purposes of consolidated group accounts prepared for any group of companies of which the company is a member.
- (2) In sub-paragraph (1) –
 - “consolidated group accounts” means group accounts that satisfy the requirements of –
 - (a) section 227 of the Companies Act 1985 (c. 6), or
 - (b) in Northern Ireland, Article 235 of the Companies (Northern Ireland) Order 1986 (SI 1986/1032 (N.I. 6)),or the corresponding requirements of the law of a country outside the United Kingdom; and 25
 - “group of companies” means a group as defined in –
 - (a) section 262(1) of that Act, or
 - (b) in Northern Ireland, Article 270(1) of that Order,or the corresponding provision of the law of a country outside the United Kingdom. 30
- (3) This paragraph does not apply if or to the extent that the consolidated group accounts are prepared –
 - (a) in accordance with the requirements of the law of a country outside the United Kingdom, and 35
 - (b) on a basis that, in relation to the matters mentioned in sub-paragraph (1), substantially diverges from generally accepted accounting practice.

PART 2

DEBITS IN RESPECT OF INTANGIBLE FIXED ASSETS 40

Introduction

- 7 (1) This Part provides for debits to be brought into account by a company for tax purposes in respect of –

-
- (a) expenditure on an intangible fixed asset that is written off for accounting purposes as it is incurred (see paragraph 8);
- (b) writing down the capitalised cost of an intangible fixed asset –
- (i) on an accounting basis (see paragraph 9), or
- (ii) on a fixed-rate basis (see paragraphs 10 and 11); and 5
- (c) the reversal of a previous accounting gain in respect of an intangible fixed asset (see paragraph 12).
- (2) This Part does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset (see Part 4).

Expenditure written off as it is incurred 10

- 8 (1) Where in a period of account expenditure on an intangible fixed asset is recognised in a company's profit and loss account, a corresponding debit shall be brought into account for tax purposes.
- (2) Subject to any adjustment required for tax purposes, the amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes. 15
- (3) Nothing in –
- section 74(1)(m) or (p) of the Taxes Act 1988 (annual payments and patent royalties not to be deducted in computing profits under Case I or II of Schedule D), or 20
- section 817(1)(b) of that Act (annual payments not to be deducted in arriving at the amount of profits or gains for tax purposes),
- has effect to prevent a debit being brought into account for tax purposes by a company in accordance with this paragraph (and given effect accordingly under Part 6). 25
- (4) This paragraph does not apply to a loss that represents previously capitalised expenditure.

Writing down on accounting basis

- 9 (1) Where in a period of account a loss is recognised in the company's profit and loss account in respect of capitalised expenditure on an intangible fixed asset – 30
- (a) by way of amortisation, or
- (b) as a result of an impairment review,
- a corresponding debit shall be brought into account for tax purposes.
- (2) The reference in sub-paragraph (1) to an "impairment review" does not include the valuation of an asset for the purpose of determining the amount of expenditure to be capitalised in the first place. 35
- (3) The amount of the debit for tax purposes in respect of expenditure on an asset is, in the period of account in which the expenditure is capitalised:

$$\text{Accounting Loss} \times \frac{\text{Tax Cost}}{\text{Accounting Cost}}$$

where –

Accounting Loss is the amount of the loss recognised for accounting purposes, 40

Tax Cost is the amount of expenditure on the asset that is recognised for tax purposes, and
Accounting Cost is the amount capitalised in respect of expenditure on the asset.

- (4) Subject to any adjustment required for tax purposes, the amount of the expenditure on the asset that is recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company. 5
- (5) The amount of the debit for tax purposes in respect of expenditure on an asset is, in a subsequent period of account:

$$\text{Accounting Loss} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where – 10

Accounting Loss is the amount of the loss recognised for accounting purposes,

Tax Value is the tax written down value of the asset immediately before the amortisation charge is made or, as the case may be, the impairment loss is recognised for accounting purposes, and 15

Accounting Value is the value of the asset recognised for accounting purposes immediately before the amortisation charge or, as the case may be, the impairment review.

- (6) In this paragraph “capitalised” means capitalised for accounting purposes.

Writing down at fixed rate: election for fixed-rate basis 20

- 10 (1) A company may elect to write down the cost of an intangible fixed asset for tax purposes at a fixed rate.
- (2) An election to that effect may be made whether or not the asset is written down for accounting purposes.
- (3) An election under this paragraph must be made – 25
- (a) in writing,
 - (b) to the Inland Revenue,
 - (c) no later than two years after the end of the accounting period in which the asset is created or acquired by the company making the election. 30
- (4) An election under this paragraph in relation to an asset has effect in relation to all expenditure on the asset that is capitalised for accounting purposes.
- (5) An election under this paragraph is irrevocable.
- (6) Paragraph 9 (writing down on accounting basis) does not apply to an asset in respect of which an election is made under this paragraph. 35

Writing down at fixed rate: calculation

- 11 (1) Where an election is made for writing down at a fixed rate, a debit equal to –
- (a) 4% of the cost of the asset, or
 - (b) if less, the balance of the tax written down value,
- shall be brought into account for tax purposes in each accounting period beginning with that in which the relevant expenditure is incurred. 40

(2)	If the accounting period is less than 12 months, the amount mentioned in sub-paragraph (1)(a) above shall be proportionately reduced.	
(3)	The cost of the asset means the cost recognised for tax purposes.	
(4)	Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount capitalised for accounting purposes in respect of expenditure on the asset.	5
(5)	After a part realisation of the asset the reference in sub-paragraph (1)(a) to the cost of the asset shall be read as a reference to—	
	(a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and	10
	(b) the cost so recognised of any subsequent expenditure on the asset that is capitalised for accounting purposes.	
(6)	On a further part realisation, sub-paragraph (5) applies again.	
	<i>Reversal of previous accounting gain</i>	15
12 (1)	Where in a period of account a loss is recognised in the company's profit and loss account reversing (in whole or in part) a gain recognised in a previous period of account in respect of which a credit was brought into account for tax purposes under Part 3 (credits in respect of intangible fixed assets), a corresponding debit shall be brought into account for tax purposes.	20
(2)	The amount of the debit to be brought into account for tax purposes is:	
	$\text{Accounting Loss} \times \frac{\text{Previous Credit}}{\text{Accounting Gain}}$	
	where—	
	Accounting Loss is the amount of the loss recognised for accounting purposes,	
	Accounting Gain is the amount of the gain that is (in whole or in part) reversed, and	25
	Previous Credit is the amount of the credit previously brought into account for tax purposes in respect of the gain.	
(3)	References in this paragraph to the recognition of a loss reversing a gain recognised in a previous period of account do not include a loss recognised by way of amortisation, or as a result of an impairment review, of an asset that has previously been the subject of a revaluation within the meaning of paragraph 15.	30
	PART 3	
	CREDITS IN RESPECT OF INTANGIBLE FIXED ASSETS	35
	<i>Introduction</i>	
13 (1)	This Part provides for credits to be brought into account by a company for tax purposes in respect of—	
	(a) receipts in respect of intangible fixed assets that are recognised in the profit and loss account as they accrue (see paragraph 14),	40
	(b) revaluation of an intangible fixed asset (see paragraph 15),	

- (c) credits recognised for accounting purposes in respect of negative goodwill (see paragraph 16), and
 - (d) the reversal of previous accounting debits in respect of an intangible fixed asset (see paragraph 17).
- (2) This Part does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Part 4. 5

Receipts recognised as they accrue

- 14 (1) Where in a period of account a gain representing a receipt in respect of an intangible fixed asset is recognised in the company’s profit and loss account, a corresponding credit shall be brought into account for tax purposes. 10
- (2) Subject to any adjustment required for tax purposes, the amount of the credit recognised for tax purposes under this paragraph is the same as the amount of the gain recognised by the company for accounting purposes.

Revaluation 15

- 15 (1) Where in a period of account the accounting value of an intangible fixed asset is increased on a revaluation, a credit shall be brought into account for tax purposes.
- (2) The amount of the credit for tax purposes is—
- (a) the amount corresponding for tax purposes to the increase in value (see sub-paragraph (3)), or
 - (b) if less, the net aggregate amount of relevant tax debits previously brought into account (see sub-paragraph (4)).
- (3) The amount corresponding for tax purposes to the increase in value is:

$$\text{Accounting Adjustment} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where— 25

Accounting Adjustment is the amount of the increase in the accounting value of the asset,

Tax Value is the tax written down value of the asset immediately before the revaluation, and

Accounting Value is the accounting value of the asset by reference to which the revaluation is carried out. 30

- (4) The net aggregate amount of relevant tax debits previously brought into account is:

$$\text{Previous Debits} - \text{Previous Credits}$$

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the asset under paragraph 9 (writing down on accounting basis), and 35

Previous Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset under this paragraph. 40

- (5) For the purposes of this paragraph a “revaluation” includes—

- (a) the valuation of an asset for which a value is shown in the company's balance sheet but which has not previously been the subject of a valuation, and
- (b) the restoration of past losses.
- (6) This paragraph does not apply to an asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed rate). 5

Negative goodwill

- 16 (1) Where in a period of account a gain is recognised in the company's profit and loss account in respect of negative goodwill arising on an acquisition of a business, a corresponding credit shall be brought into account for tax purposes. 10
- (2) The amount of the credit is so much of the gain recognised for accounting purposes as, on a just and reasonable apportionment, is attributable to intangible fixed assets.

Reversal of previous accounting loss 15

- 17 (1) Where in a period of account a gain is recognised in the company's profit and loss account reversing (in whole or in part) a loss recognised in a previous period of account in respect of which a debit was brought into account for tax purposes under Part 2 (debits in respect of intangible fixed assets), a corresponding credit shall be brought into account for tax purposes. 20
- (2) The amount of the credit to be brought into account for tax purposes is:

$$\text{Accounting Gain} \times \frac{\text{Tax Debit}}{\text{Accounting Loss}}$$

where –

- Accounting Gain is the amount of the gain recognised for accounting purposes, 25
- Accounting Loss is the amount of the loss that is reversed (in whole or in part), and
- Tax Debit is the amount of the tax debit brought into account in respect of the loss.
- (3) This paragraph does not apply to a gain on a revaluation within the meaning of paragraph 15. 30

PART 4

REALISATION OF INTANGIBLE FIXED ASSETS

Introduction

- 18 This Part provides for credits or debits to be brought into account for tax purposes on the realisation by a company of an intangible fixed asset. 35

Meaning of “realisation”

- 19 (1) References in this Schedule to the realisation of an intangible fixed asset are to a transaction resulting, in accordance with generally accepted accounting practice –
- (a) in the asset ceasing to be recognised in the company’s balance sheet, or
 - (b) in a reduction in the accounting value of the asset.
- For this purpose a “transaction” includes any event giving rise to a gain recognised for accounting purposes.
- (2) In relation to an intangible fixed asset that has no balance sheet value (or no longer has a balance sheet value), sub-paragraph (1) applies as if it did have a balance sheet value. 10
- (3) References in this Schedule to a “part realisation” are to a realisation falling within sub-paragraph (1)(b).

Realisation of asset written down for tax purposes 15

- 20 (1) This paragraph applies where there is a realisation of an intangible fixed asset in respect of which debits have been brought into account for tax purposes –
- (a) under paragraph 9 (writing down on accounting basis), or
 - (b) under paragraphs 10 and 11 (writing down at fixed rate). 20
- (2) Where this paragraph applies –
- (a) if the proceeds of realisation exceed the tax written down value of the asset, a credit equal to the excess shall be brought into account for tax purposes;
 - (b) if the proceeds of realisation are less than the tax written down value of the asset, a debit equal to the shortfall shall be brought into account for tax purposes; and 25
 - (c) if there are no proceeds of realisation, a debit equal to the tax written down value shall be brought into account for tax purposes.
- (3) References in this paragraph to the tax written down value of an asset are to its tax written down value immediately before the realisation. 30

Realisation of asset shown in balance sheet and not written down for tax purposes

- 21 (1) This paragraph applies where there is a realisation of an intangible fixed asset for which a value is shown in the company’s balance sheet but which is not within paragraph 20 (asset written down for tax purposes). 35
- (2) Where this paragraph applies –
- (a) if the proceeds of realisation exceed the cost of the asset, a credit equal to the excess shall be brought into account for tax purposes;
 - (b) if the proceeds of realisation are less than the cost of the asset, a debit equal to the shortfall shall be brought into account for tax purposes; and 40
 - (c) if there are no proceeds of realisation, a debit equal to the cost of the asset shall be brought into account for tax purposes.
- (3) The cost of the asset means the cost recognised for tax purposes.

- (4) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company for accounting purposes.
- (5) After a part realisation of the asset the references in sub-paragraph (2)(a), (b) and (c) to the cost of the asset shall be read as a reference to – 5
- (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
- (b) the cost so recognised of any subsequent expenditure on the asset that is capitalised for accounting purposes. 10
- (6) On a further part realisation, sub-paragraph (5) applies again.

Apportionment in case of part realisation

- 22 (1) In the case of a part realisation the reference in paragraph 20 to the tax written down value of the asset, or, as the case may be, the reference in paragraph 21 to the cost of the asset, shall be read as references to the appropriate proportion of that amount. 15
- (2) That proportion is given by:

$$\frac{\text{Reduction in Accounting Value}}{\text{Previous Accounting Value}}$$

where –

- Reduction in Accounting Value is the difference between the accounting value immediately before the realisation compared with that immediately after the realisation; and 20
- Previous Accounting Value is the accounting value immediately before the realisation.

Realisation of asset not shown in balance sheet

- 23 (1) This paragraph applies where there is a realisation of an intangible fixed asset in relation to which neither paragraph 20 (asset written down for tax purposes) nor paragraph 21 (asset shown in balance sheet but not written down) applies. 25
- (2) Where this paragraph applies, a credit equal to any proceeds of realisation shall be brought into account for tax purposes. 30

Meaning of “proceeds of realisation”

- 24 (1) In this Schedule the “proceeds of realisation” of an asset means the amount recognised for accounting purposes as the proceeds of realisation, reduced by the amount so recognised as incidental costs of realisation.
- (2) The amounts referred to in sub-paragraph (1) are subject to any adjustment required for tax purposes. 35

Relief in case of reinvestment

- 25 The preceding provisions of this Part have effect subject to Part 7 (relief in case of reinvestment).

Abortive expenditure on realisation

- 26 (1) Where in a period of account—
- (a) a loss is recognised in the company’s profit and loss account in respect of expenditure by the company for the purposes of a transaction that would constitute a realisation of an intangible fixed asset, but 5
 - (b) the transaction does not proceed to completion, a corresponding debit shall be brought into account for tax purposes.
- (2) Subject to any adjustment required for tax purposes, the amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes. 10

PART 5

CALCULATION OF TAX WRITTEN DOWN VALUE

Asset written down on accounting basis

- 27 (1) For the purposes of this Schedule the tax written down value of an intangible fixed asset to which paragraph 9 applies (writing down on accounting basis) is given by: 15

Tax Cost – Debits + Credits

where—

- Tax Cost is the cost of the asset recognised for tax purposes;
 - Debits is the total amount of the debits previously brought into account for tax purposes in respect of the asset under paragraph 9; and 20
 - Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset under paragraph 15 (revaluation). 25
- (2) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.
- (3) This paragraph has effect subject to paragraph 29 in the case of an asset that has been the subject of a part realisation. 30

Asset written down at fixed rate

- 28 (1) For the purposes of this Schedule the tax written down value of an intangible fixed asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed rate) is given by:

Tax Cost – Debits

where—

- Tax Cost is the cost of the asset recognised for tax purposes; and
- Debits is the total amount of the debits previously brought into account for tax purposes in respect of the asset under paragraph 11 (writing down on fixed-rate basis: calculation). 35

- (2) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.
- (3) This paragraph has effect subject to paragraph 29 in the case of an asset that has been the subject of a part realisation. 5

Effect of part realisation of asset

- 29 (1) The tax written down value of an intangible asset that has been the subject of a part realisation is determined as follows.
- (2) The tax written down value of the asset immediately after the part realisation is given by: 10

$$\text{Previous Tax Value} \times \frac{\text{New Accounting Value}}{\text{Previous Accounting Value}}$$

where –

- Previous Tax Value is the tax written down value of the asset immediately before the part realisation;
- New Accounting Value is the accounting value of the asset immediately after the part realisation; and 15
- Previous Accounting Value is the accounting value immediately before the part realisation.
- (3) Subsequently, the tax written down value of the asset is determined in accordance with paragraph 27 or 28 –
- (a) taking the cost of the asset recognised for tax purposes to be the tax written down value given by sub-paragraph (2) above together with the cost recognised for tax purposes of subsequent expenditure on the asset that is capitalised for accounting purposes; and 20
- (b) taking account only of debits and credits brought into account for tax purposes after the part realisation. 25
- (4) On a further part realisation, the preceding provisions of this paragraph apply again.

PART 6

HOW CREDITS AND DEBITS ARE GIVEN EFFECT

Introduction 30

- 30 (1) Credits and debits to be brought into account for tax purposes under this Schedule are given effect in accordance with this Part.
- (2) Credits and debits in respect of assets held for the purposes mentioned in –
- (a) paragraph 31 (assets held for purposes of trade), or
- (b) paragraph 32 (assets held for purposes of property business) or 35
- (c) paragraph 33 (assets held for purposes of certain concerns taxed under Case I of Schedule D),
- are given effect in accordance with the paragraph in question.
- (3) Other credits and debits (“non-trading credits and debits”) are given effect in accordance with paragraphs 34 and 35. 40

- (4) Any apportionment necessary where an asset is held for purposes falling within more than one of the provisions mentioned above shall be made on a just and reasonable basis.
- (5) The provisions mentioned in this paragraph have effect subject to paragraph 36 (special provisions relating to insurance companies). 5

Asset held for purposes of trade

- 31 Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a trade carried on by it in that period are given effect by treating – 10
- (a) credits as receipts of the trade, and
- (b) debits as expenses of the trade,
- in calculating the profits of the trade for tax purposes.

Asset held for purposes of property business

- 32 (1) Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a property business carried on by it in that period are given effect by treating – 15
- (a) credits as receipts of the business, and
- (b) debits as expenses of the business,
- in computing the profits of the business for tax purposes.
- (2) A “property business” means – 20
- (a) an ordinary Schedule A business,
- (b) a furnished holiday lettings business, or
- (c) an overseas property business.
- (3) In this paragraph – 25
- “ordinary Schedule A business” means a Schedule A business except in so far as it is a furnished holiday lettings business; and
- “furnished holiday lettings business” means a Schedule A business in so far as it consists of the commercial letting of furnished holiday accommodation (as defined in section 504 of the Taxes Act 1988) in the United Kingdom. 30
- (4) Section 503 of the Taxes Act 1988 (letting of furnished holiday accommodation treated as separate, single trade) applies for the purposes of this Schedule.

Assets held for purposes of mines, transport undertakings, etc

- 33 Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a concern listed in section 55(2) of the Taxes Act 1988 (mines, transport undertakings, etc) that is carried on by the company in that period are given effect by treating – 35
- (a) credits as receipts of the concern, and
- (b) debits as expenses of the concern, 40
- in computing the profits of the concern under Case I of Schedule D.

Non-trading credits and debits

- 34 (1) Where, or to the extent that, in an accounting period, there are –
- (a) credits in respect of intangible fixed assets that are not within any of paragraphs 31 to 33 (“non-trading credits”), or
 - (b) debits in respect of intangible fixed assets that are not within any of those paragraphs (“non-trading debits”),
- the company’s aggregate non-trading gain or loss on intangible fixed assets must be calculated. 5
- (2) There is a non-trading gain on intangible fixed assets if –
- (a) there are only non-trading credits, or 10
 - (b) there are both non-trading credits and non-trading debits and the aggregate of the former exceeds the aggregate of the latter.
- The amount of the non-trading gain is the aggregate amount of the credits or, as the case may be, the amount of the excess.
- (3) There is a non-trading loss on intangible fixed assets if – 15
- (a) there are only non-trading debits, or
 - (b) there are both non-trading credits and non-trading debits and the aggregate of the latter exceeds the aggregate of the former.
- The amount of the non-trading loss is the aggregate amount of the debits or, as the case may be, the amount of the excess. 20
- (4) A non-trading gain on intangible fixed assets is chargeable to tax under Case VI of Schedule D.
- (5) A non-trading loss on intangible fixed assets is given effect in accordance with the following paragraph.

Claim to set non-trading loss against total profits 25

- 35 (1) A company that has a non-trading loss on intangible fixed assets for an accounting period may claim to have the whole or part of the loss set off against the company’s total profits for that period.
- (2) Any such claim must be made not later than the end of the period of two years immediately following the end of the accounting period to which it relates, or within such further period as the Inland Revenue may allow. 30
- (3) To the extent that the loss is not –
- (a) set off against total profits on a claim under sub-paragraph (1), or
 - (b) surrendered by way of group relief (see section 403 of the Taxes Act 1988),
- it is carried forward to the next accounting period of the company and treated as if it were a non-trading debit of that period. 35

Special provisions relating to insurance companies

- 36 (1) Nothing in this Schedule shall be read as preventing profits and gains arising from intangible fixed assets of an insurance company from being included, where – 40
- (a) the assets are referable to life assurance business carried on by the company, and
 - (b) the I minus E basis is applied in relation to that business,

- in profits and gains on which the company is chargeable to tax in accordance with that basis.
- (2) Where for any accounting period the I minus E basis is applied in relation to life assurance business carried on by an insurance company, the effect of applying that basis is that credits or debits falling to be brought into account under this Schedule in respect of intangible fixed assets of the company referable to that business – 5
- (a) are not brought into account as mentioned in paragraph 31 (assets held for purposes of trade), but
 - (b) subject to the following provisions of this paragraph, are instead brought into account under paragraph 34 as non-trading credits or, as the case may be, non-trading debits. 10
- (3) Where an insurance company carries on basic life assurance and general annuity business –
- (a) a separate computation of the credits and debits referable to that business shall be made under paragraph 34 (non-trading credits and debits), 15
 - (b) any resulting non-trading gain in respect of intangible assets is chargeable to tax as mentioned in sub-paragraph (4) of that paragraph, and 20
 - (c) any resulting non-trading loss in respect of intangible assets is treated as additional expenses of management within section 76 of the Taxes Act 1988.
- (4) References in any enactment to the computation of any profits of an insurance company in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D have effect as if those provisions included the provisions of this Schedule, but only to the extent that they relate to the bringing into account of debits in respect of royalties. 25
- (5) Where an insurance company carries on life assurance business or any category of life assurance business – 30
- (a) the credits and debits under this Schedule referable to that business or category of business, other than debits in respect of royalties, shall be disregarded for the purposes of any computations falling to be made in relation to that business or category of business in accordance with the provisions applicable to Case I of Schedule D, and 35
 - (b) accordingly, the amounts to be brought into account in any such computations shall be determined under the provisions applicable apart from this Schedule.
- (6) In this paragraph “the I minus E basis” means the basis commonly so called under which a company carrying on life assurance business is charged to tax on that business otherwise than under Case I of Schedule D. 40

PART 7

ROLL-OVER RELIEF IN CASE OF REALISATION AND REINVESTMENT

The relief

- 37 (1) This Part provides for relief where a company realises an intangible fixed asset (the “old asset”) and incurs expenditure on other intangible fixed assets (“other assets”). 5
- (2) A company is entitled to relief under this Part only if –
- (a) the conditions in paragraph 38 are met in relation to the old asset and its realisation,
 - (b) the conditions in paragraph 39 are met in relation to the expenditure on other assets, and 10
 - (c) the company claims the relief in accordance with paragraph 40.

Conditions to be met in relation to the old asset and its realisation

- 38 (1) The following conditions must be met in relation to the old asset and its realisation – 15
- (a) the asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company; and
 - (b) the proceeds of realisation of the asset must exceed – 20
 - (i) the cost of the asset, or
 - (ii) in the case of a part realisation, the appropriate proportion of the cost of the asset, or
 - (iii) in the case of the realisation of an asset that has been the subject of a part realisation, the adjusted cost of the asset.
- (2) If the asset was a chargeable intangible asset of the company – 25
- (a) at the time of its realisation, and
 - (b) for a substantial part of, but not throughout, the period during which it was held by the company,
- a part of the asset representing the time for which it was a chargeable intangible asset shall be treated for the purposes of this Part as if it were a separate asset in relation to which the condition in sub-paragraph (1)(a) was wholly met. 30
- Any apportionment necessary for this purpose shall be made on a just and reasonable basis.
- (3) In sub-paragraph (1)(b) “the cost of the asset” means the total of the capitalised expenditure on the asset recognised for tax purposes. 35
- For the calculation of the appropriate proportion or adjusted cost, see paragraph 42.
- (4) The condition in sub-paragraph (1)(b) is necessarily met if the asset has no cost as defined above. 40

Conditions to be met in relation to the expenditure on other assets

- 39 (1) The following conditions must be met in relation to the expenditure on other assets –

-
- (a) the expenditure must be incurred in the period –
- (i) beginning twelve months before the date of realisation of the old asset or at such earlier time as the Inland Revenue may by notice allow, and
 - (ii) ending three years after the date of realisation of the old asset or at such later time as the Inland Revenue may by notice allow; 5
- (b) the expenditure must be capitalised by the company for accounting purposes; and
- (c) the assets on which the expenditure is incurred must be chargeable intangible assets in relation to the company immediately after the expenditure is incurred. 10
- (2) For the purposes of this paragraph expenditure is regarded as incurred when it is recognised for accounting purposes.
- Claim for relief* 15
- 40 A claim by a company for relief under this Part must specify –
- (a) the old assets to which the claim relates, and
 - (b) in relation to each old asset –
 - (i) the expenditure on other assets by reference to which relief is claimed, and 20
 - (ii) the amount of the relief claimed.
- How the relief is given: general*
- 41 (1) A company that is entitled to, and claims, relief under this Part is treated for the purposes of this Schedule as if –
- (a) the proceeds of realisation of the old asset, and 25
 - (b) the cost recognised for tax purposes of acquiring the other assets, were each reduced by the amount available for relief.
- (2) If the amount of qualifying expenditure on other assets is equal to or greater than the proceeds of realisation of the old asset, the amount available for relief is the amount by which the proceeds of realisation exceed the cost of the old asset. 30
- (3) If the amount of qualifying expenditure on other assets is less than the proceeds of realisation of the old asset, the amount available for relief is the amount (if any) by which the qualifying expenditure on other assets exceeds the cost of the old asset. 35
- (4) In this paragraph –
- (a) “qualifying expenditure” means expenditure in relation to which the conditions in paragraph 39 are met;
 - (b) “the cost of the old asset” means the total of the capitalised expenditure on the asset recognised for tax purposes; 40
 - (c) the references to the cost of the old asset shall be read –
 - (i) in the case of a part realisation, as references to the appropriate proportion of the cost, and
 - (ii) in the case of the realisation of an asset that has been the subject of a part realisation, as references to the adjusted cost. 45

For the calculation of the appropriate proportion and the adjusted cost, see paragraph 42.

- (5) The relief does not affect the treatment for any purpose of the Taxes Acts of any other party to any transaction involved in the realisation of the old asset or the expenditure on the other assets. 5

Determination of appropriate proportion or adjusted cost

- 42 (1) Any reference in paragraph 38 or 41 to the appropriate proportion of the cost of the old asset in the case of a part realisation is to the proportion given by:

$$\frac{\text{Reduction in Accounting Value}}{\text{Previous Accounting Value}}$$

where –

- Reduction in Accounting Value is the difference between the accounting value immediately before the part realisation compared with that immediately after the part realisation; and 10
- Previous Accounting Value is the accounting value immediately before the part realisation.
- (2) In the case of an asset that has previously been the subject of a part realisation the reference in sub-paragraph (1) to the cost of the old asset shall be read as a reference to the adjusted cost. 15
- (3) Any reference in paragraph 38 or 41, or sub-paragraph (1) above, to the adjusted cost in the case where the old asset has previously been the subject of a part realisation is to the amount given by deducting from the cost of the old asset the total of the amounts given by sub-paragraphs (1) and (2) above in relation to earlier part realisations. 20

Declaration of provisional entitlement to relief

- 43 (1) A company realising an intangible fixed asset may make a declaration of provisional entitlement to relief under this Part. 25
- (2) A declaration of provisional entitlement is a declaration by the company, in its company tax return for the accounting period in which the realisation takes place, that the company –
- (a) has realised an intangible fixed asset,
 - (b) proposes to meet the conditions for relief under this Part, and 30
 - (c) is accordingly provisionally entitled to relief of a specified amount.
- (3) While the declaration continues in force, this Part applies as if the conditions for relief under this Part were met.
- (4) A declaration of provisional entitlement ceases to have effect if, or to the extent that – 35
- (a) it is withdrawn, or
 - (b) it is superseded by a claim for relief under this Part.
- (5) So far as not previously withdrawn or superseded, a declaration of provisional entitlement ceases to have effect four years after the end of the accounting period in which the realisation took place. 40
- (6) On a declaration of provisional entitlement ceasing to have effect, in whole or in part, all necessary adjustments shall be made, by assessment or otherwise.

This applies notwithstanding any limitation on the time within which assessments or amendments may be made.

Realisation and reacquisition

- 44 This Part applies where a company realises an asset and subsequently reacquires it as if what is reacquired were a different asset from that previously realised. 5

Deemed realisations and deemed acquisitions to be disregarded

- 45 (1) This Part does not apply in relation to a deemed realisation of an asset except as provided by –
- (a) paragraph 65 (application of roll-over relief in relation to deemed realisation as a result of degrouping), or 10
 - (b) paragraph 67 (application of roll-over relief in relation to reallocated degrouping charge).
- (2) No account shall be taken for the purposes of this Part of any deemed reacquisition. 15

PART 8

GROUPS OF COMPANIES

Introduction

- 46 (1) This Part has effect for the purposes of this Schedule to determine whether companies form a group and, where they do, which is the principal company of the group. 20
- (2) In this Part references to a company apply only to –
- (a) a company within the meaning of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (SI 1986/1032 (N.I. 6)); 25
 - (b) a company (other than a limited liability partnership) constituted under any other Act or by a Royal Charter or letters patent;
 - (c) a company formed under the law of a country or territory outside the United Kingdom;
 - (d) a registered industrial and provident society within the meaning of section 486 of the Taxes Act 1988; 30
 - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40); or
 - (f) a building society.
- (3) In this Schedule the expressions “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company formed under the law of a country outside the United Kingdom. 35

General rule: a company and its 75% subsidiaries form a group

- 47 (1) A company (“the principal company of the group”) and all its 75% subsidiaries form a group, and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on. 40

(2) Sub-paragraph (1) has effect subject to the following provisions of this Part.

Membership of group restricted to effective 51% subsidiaries of principal company

- 48 A group of companies does not include any company (other than the principal company of the group) that is not an effective 51% subsidiary of the principal company of the group. 5

Principal company cannot be 75% subsidiary of another company

- 49 (1) A company cannot be the principal company of a group if it is itself a 75% subsidiary of another company.
- (2) Notwithstanding sub-paragraph (1), where—
- (a) a company (“the subsidiary”) is a 75% subsidiary of another company, and 10
- (b) those companies are prevented from being members of the same group by paragraph 48 (the effective 51% subsidiary requirement), the subsidiary may, if the requirements of paragraphs 47 and 48 are met, itself be the principal company of another group, unless this enables a further company to be the principal company of a group of which the subsidiary would be a member. 15

Company cannot be member of more than one group

- 50 (1) A company cannot be a member of more than one group.
- (2) If a company would otherwise be a member of two or more groups, the group of which it is a member is determined by applying the following rules (applying the rules successively in the order shown until an answer is obtained). 20
- (3) In the following provisions the principal company of each group is referred to as the “head of a group”. 25
- (4) The first rule is that the company is a member of the group of which it would be a member if, in applying paragraph 48 (the effective 51% subsidiary requirement), there were left out of account—
- (a) any amount to which a head of a group is beneficially entitled of any profits available for distribution to equity holders of a head of another group, or 30
- (b) any amount to which a head of a group would be beneficially entitled of any assets of a head of another group available for distribution to its equity holders on a winding up.
- (5) The second rule is that the company is a member of the group the head of which is beneficially entitled to a percentage of the profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled. 35
- (6) The third rule is that the company is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding up that is greater than the percentage of those assets to which any other head of a group would be so entitled. 40
- (7) The fourth rule is that the company is a member of the group the head of which owns directly or indirectly a percentage of the company’s ordinary 45

share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group.

The provisions of section 838(2) to (10) of the Taxes Act 1988 apply for the interpretation of this sub-paragraph as they apply for the interpretation of subsection (1)(a) of that section (definition of “51% subsidiary”).

5

Continuity of identity of group

51 (1) For the purposes of this Schedule –

(a) a group of companies remains the same group of companies so long as the same company is the principal company of the group, and

(b) if the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same (and the question whether a company has ceased to be a member of a group shall be determined accordingly).

10

(2) For the purposes of this Schedule the passing of a resolution or the making of an order, or any other act, for the winding up of a member of a group is not regarded as the occasion of that or any other company ceasing to be a member of the group.

15

Meaning of “effective 51% subsidiary”

52 For the purposes of this Schedule a company (“the subsidiary”) is an effective 51% subsidiary of another company (“the parent”) if, and only if, the parent –

20

(a) is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary, and

(b) would be beneficially entitled to more than 50% of any assets of the subsidiary available for distribution to its equity holders on a winding up.

25

Meaning of equity holder and profits or assets available for distribution

53 (1) Schedule 18 to the Taxes Act 1988 (meaning of equity holder and determination of profits or assets available for distribution) applies for the purposes of paragraphs 50 and 52.

30

(2) In that Schedule as it applies for the purposes of those paragraphs –

(a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to those paragraphs;

(b) omit the words in paragraph 1(4) from “but” to the end;

(c) omit paragraph 5(3) and paragraphs 5B to 5F; and

(d) omit paragraph 7(1)(b).

35

Supplementary provisions

54 (1) In applying for the purposes of this Part the definition of “75% subsidiary” in section 838 of the Taxes Act 1988, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

40

(2) The provisions of section 170(12) to (14) of the Taxation of Chargeable Gains Act 1992 (c. 12) (application to certain statutory bodies of provisions relating to groups of companies) apply for the purposes of this Part as they apply for the purposes of sections 171 to 181 of that Act.

PART 9

APPLICATION OF PROVISIONS TO GROUPS OF COMPANIES

Transfers within a group

- 55 (1) Where—
- (a) an intangible fixed asset is transferred from one company (“the transferor”) to another company (“the transferee”) at a time when both companies are members of the same group, and 5
 - (b) the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, 10
- the transfer of the asset is treated for the purposes of this Schedule as tax-neutral (see paragraph 139).
- (2) Sub-paragraph (1) does not apply—
- (a) if the transferor or transferee is a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or 15
 - (b) if the transferee is a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

Roll-over relief on reinvestment: application to group member

- 56 (1) The following provisions have effect as regards the application of Part 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group. 20
- (2) That Part applies where—
- (a) the realisation of the old asset is by a company that, at the time of the realisation, is a member of a group, 25
 - (b) the expenditure on other assets is by another company that, at the time the expenditure is incurred—
 - (i) is a member of the same group as the company mentioned in paragraph (a), and
 - (ii) is not a dual resident investing company, 30
 - (c) the other assets are chargeable intangible assets in relation to the company mentioned in paragraph (b) immediately after the expenditure is incurred, and
 - (d) the claim is made by both companies, 35
- as if both companies were the same person.
- (3) That Part does not apply if the expenditure on other assets is expenditure on the acquisition of assets acquired from another member of the same group by a tax-neutral transfer.
- (4) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph. 40

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

- 57 (1) Where a company (“company A”) acquires a controlling interest in another company (“company B”) and intangible fixed assets (“underlying assets”) are held – 5
- (a) by company B, or
 - (b) by one or more other companies that were not in the same group as company A before its acquisition of a controlling interest in company B but as a result of that acquisition are in the same group as company A immediately after the acquisition, 10
- Part 7 (roll-over relief in case of realisation and reinvestment) has effect in accordance with the following provisions.
- (2) The expenditure by company A on the acquisition of a controlling interest in company B is treated as expenditure on acquiring the underlying assets.
- (3) The amount of expenditure that is treated as incurred by company A on acquiring the underlying assets is taken to be – 15
- (a) the tax written down value of the underlying assets immediately before the acquisition, or
 - (b) if less, the amount or value of the consideration for the acquisition by company A of the controlling interest in company B. 20
- (4) The requirement that the assets be chargeable intangible assets in relation to company A immediately after the expenditure is incurred on acquiring them is treated as met in relation to the underlying assets if they are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by company A of a controlling interest in company B. 25
- (5) The tax written down value of the underlying assets in the hands of the company by which they are held shall be reduced by the amount available for relief, and if – 30
- (a) there is more than one underlying asset, and
 - (b) the amount of expenditure on other assets that is treated as incurred exceeds the amount available for relief,
- the company by which the underlying assets are held may decide how the amount available for relief is to be allocated in reducing the tax written down values of the assets. 35
- If there is more than one such company, they may agree between them how that amount is to be allocated.
- (6) A claim for relief under Part 7 made by virtue of this paragraph must be made jointly by company A and the company or companies holding the underlying assets concerned. 40
- (7) For the purposes of this paragraph company A acquires a controlling interest in company B if the two companies are not in the same group and there is an acquisition by company A of shares in company B such that those two companies are in the same group immediately after the acquisition.
- (8) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph. 45

Company ceasing to be member of group (“degroupping”)

- 58 (1) This paragraph applies where –
- (a) a company (“the transferor”) that is a member of a group (“the group”) transfers an intangible fixed asset (“the relevant asset”) to another company (“the transferee”), 5
 - (b) the relevant asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, and
 - (c) the transferee –
 - (i) having been a member of the group at the time of the transfer, or 10
 - (ii) having subsequently become a member of the group, ceases to be a member of the group after the transfer and before the end of the period of six years after the date of the transfer.
- (2) If, when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company also leaving the group, this Schedule has effect as if the transferee, immediately after the transfer of the relevant asset to it, had realised the asset for its market value at that time and immediately reacquired the asset at that value. 15
- (3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between – 20
- (a) the transfer of the relevant asset to the transferee, and
 - (b) the transferee ceasing to be a member of the group,
- shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to be a member of the group. 25
- (4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer. 30
- Provided that, in a case where –
- (a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and
 - (b) the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group, 35
- any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.
- (5) This paragraph has effect subject to – 40
- paragraph 59 (associated companies leaving group at the same time),
 - paragraph 60 (principal company becoming member of another group),
 - paragraph 61 (company ceasing to be member of group by reason of exempt distribution), and 45
 - paragraph 62 (merger carried out for bona fide commercial reasons).

Degrouping: associated companies leaving group at the same time

- 59 (1) Where two or more associated companies cease to be members of a group at the same time, paragraph 58 does not have effect in relation to a transfer from one to another of those companies.
- (2) But where—
- (a) a company (“the transferee”) that has ceased to be a member of a group of companies (“the first group”) acquired an asset from another company (“the transferor”) which was a member of that group at the time of the transfer, 5
 - (b) sub-paragraph (1) applies in relation to the transferee’s ceasing to be a member of the first group so that paragraph 58 does not have effect, 10
 - (c) the transferee subsequently ceases to be a member of another group of companies (“the second group”), and
 - (d) there is a relevant connection between the two groups (see sub-paragraph (3)), 15
- paragraph 58 has effect in relation to the transferee’s ceasing to be a member of the second group as if it were the second group of which both companies had been members at the time of the transfer.
- (3) For the purposes of sub-paragraph (2) there is a relevant connection between the first group and the second group if, at the time when the transferee ceases to be a member of the second group, the company which is the principal company of that group is under the control of— 20
- (a) the company that is the principal company of the first group or, if that group no longer exists, was the principal company of that group when the transferee ceased to be a member of it; or 25
 - (b) any person or persons who control the company mentioned in paragraph (a) or who have had it under their control at any time in the period since the transferee ceased to be a member of the first group; or
 - (c) any person or persons who have, at any time in that period, had under their control either— 30
 - (i) a company that would have been a person falling within paragraph (b) if it had continued to exist, or
 - (ii) a company that would have been a person falling within this paragraph (whether by reference to a company that would have been a person falling within paragraph (b) or by reference to a company or series of companies falling within this provision). 35
- (4) The provisions of section 416(2) to (6) of the Taxes Act 1988 (meaning of control) have effect for the purposes of sub-paragraph (3) as they have effect for the purposes of Part 11 of that Act. 40
- But a person carrying on a business of banking shall not be regarded for those purposes as having control of a company by reason only of having, or of the consequences of having exercised, any rights in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business. 45

Degrouping: principal company becoming member of another group

- 60 (1) Paragraph 58 does not apply where a company ceases to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group (“the second group”).
- (2) But if, in a case where paragraph 58 would have applied but for sub-paragraph (1) above, after the transfer and before the end of the period of six years after the date of the transfer –
- (a) the transferee ceases to satisfy the condition that it is both a 75% subsidiary and an effective 51% subsidiary of one or more members of the second group (“the qualifying condition”), and
- (b) at the time at which the transferee ceases to satisfy that condition, the relevant asset is held by the transferee or another company in the same group,
- this Schedule has effect as if the transferee, immediately after the transfer to it of the relevant asset, had realised the asset for its market value at that time and immediately reacquired the asset at that value.
- (3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between –
- (a) the transfer of the relevant asset to the transferee, and
- (b) the transferee ceasing to satisfy the qualifying condition,
- shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to satisfy the qualifying condition.
- (4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.
- Provided that, in a case where –
- (a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and
- (b) the transferee ceased to carry on that trade, business or concern before it ceased to satisfy the qualifying condition,
- any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.
- (5) This paragraph is subject to paragraph 62 (merger carried out for bona fide commercial reasons).

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

- 61 (1) Paragraphs 58 and 60 do not apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution, unless there is a chargeable payment within five years after the making of the exempt distribution.
- (2) If within five years after the making of the exempt distribution there is a chargeable payment, all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made within the period of three years after the making of the chargeable payment.

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

- (3) In this paragraph –
“exempt distribution” means a distribution that is exempt by virtue of section 213(2) of the Taxes Act 1988; and 5
“chargeable payment” has the meaning given in section 214(2) of that Act.
- (4) In determining for the purposes of this paragraph whether one company is a 75% subsidiary of another, the other company –
(a) shall be treated as not being the owner of any share capital that it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade, and 10
(b) shall be treated as not being the owner of any share capital that it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt. 15

Degrouping: merger carried out for bona fide commercial reasons

- 62 (1) Paragraphs 58 to 61 do not apply where –
(a) the transferee ceases to be a member of a group of companies (“the group”) as part of a merger, and
(b) the merger is carried out for bona fide commercial reasons and the avoidance of liability to tax is not the main or one of the main purposes of the merger. 20
- (2) For this purpose a “merger” means an arrangement (which in this paragraph includes a series of arrangements) whereby –
(a) one or more companies (“the acquiring company” or, as the case may be, “the acquiring companies”) none of which is a member of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee, and 25
(b) one or more members of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90% of the ordinary share capital of which was then beneficially owned by two or more of the acquiring companies, 30
and in respect of which the conditions in sub-paragraph (4) below are fulfilled. 35
- (3) For the purposes of sub-paragraph (2) a member of a group of companies shall be treated as carrying on as one business the activities of that group. 40
- (4) The conditions referred to in sub-paragraph (2) are –
(a) that not less than 25% by value of each of the interests acquired as mentioned in sub-paragraph (2)(a) and (b) consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in sub-paragraph (2)(b) consists of a holding of share capital (of any description) or debentures or both; and 45

- (b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(a) is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(b); and 5
- (c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in sub-paragraph (2)(a), disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in sub-paragraph (2)(b). 10
- (5) For the purposes of sub-paragraph (4) the value of an interest shall be determined as at the date of its acquisition. 15

Degrouping: group member ceasing to exist

- 63 References in paragraphs 58 to 61 (degroupering) to a company ceasing to be a member of a group do not include cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist. 20

Degrouping: supplementary provisions

- 64 For the purposes of paragraphs 58 to 61 (degroupering) –
- (a) two or more companies are associated if, by themselves, they would form a group of companies; and
- (b) an asset acquired by a company is treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset. 25

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

- 65 (1) Part 7 (roll-over relief in case of reinvestment) applies with the following modifications where a company is treated as having realised an asset by virtue of paragraph 58 or 60 (degroupering) – 30
- (a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute a reference to its being a chargeable intangible asset in relation to the transferor; 35
- (b) in paragraph 39(1) (conditions to be met in relation to expenditure on other assets), for the references to the date of realisation of the old asset substitute references to –
- (i) in a case within paragraph 58, the date on which the transferee ceased to be a member of the group, and 40
- (ii) in a case within paragraph 60, the date on which the transferee ceased to satisfy the qualifying condition;
- (c) references to the proceeds of realisation shall be read as references to the amount for which the transferee is treated as having realised the asset. 45

- (2) A reduction of the deemed realisation proceeds as a result of a claim for relief under Part 7 does not affect the value at which the company is deemed to have reacquired the asset.
- (3) In this paragraph “the transferee” and “the transferor” have the same meaning as in paragraph 58. 5

Reallocation of degrouping charge within group

- 66 (1) This paragraph applies where a chargeable realisation gain accrues to a company (“company X”) under paragraph 58 or 60 in respect of an asset.
- (2) For the purposes of this paragraph –
- (a) “the relevant time” is – 10
 - (i) in a case within paragraph 58, immediately before company X ceases to be a member of the group;
 - (ii) in a case within paragraph 60, immediately before company X ceases to satisfy the qualifying condition;
 - (b) “the relevant group” is – 15
 - (i) in a case within paragraph 58, the group of which company X was a member at the relevant time;
 - (ii) in a case within paragraph 60, the second group (within the meaning of that paragraph).
- (3) Company X and a company that was a member of the relevant group at the relevant time (“company Y”) may jointly elect that the gain, or such part of it as may be specified in the election, shall be treated as accruing to company Y and not to company X. 20
- (4) An election to that effect may be made only if the following two conditions are met. 25
- (5) The first condition is that at the relevant time company Y –
- (a) was resident in the United Kingdom, or
 - (b) carried on a trade in the United Kingdom through a branch or agency and was not by virtue of arrangements under Part 18 of the Taxes Act 1988 (double taxation relief) exempt from corporation tax in respect of the profits or gains of that branch or agency. 30
- (6) The second condition is that company Y was not at the relevant time –
- (a) a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or 35
 - (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).
- (7) An election under this paragraph must be made –
- (a) by notice in writing to the Inland Revenue,
 - (b) not later than two years after the end of the accounting period of company X in which the relevant time falls. 40
- (8) The effect of the election is that the gain, or the part specified in the election, is treated –
- (a) as if it had accrued to company Y at the relevant time as a non-trading credit for the purposes of Part 6 (how credits and debits are given effect), and 45

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

Application of roll-over relief in relation to reallocated degrouping charge 5

- 67 (1) Where an election has been made under paragraph 66, this paragraph applies for the purpose of enabling company Y to make a claim under Part 7 (roll-over relief on reinvestment).
- (2) For that purpose –
- (a) Part 7 applies as if the deemed realisation of the asset had been by company Y and not company X, 10
- (b) the conditions in paragraph 38 (conditions to be met in relation to the old asset) are treated as met in relation to the asset if they would have been met if there had been no election and company X had made the claim, and 15
- (c) the proceeds of realisation and the cost of the old asset recognised for tax purposes are what they would have been if there had been no election and company X had made the claim.
- (3) Where the election relates to part only of the gain on the deemed realisation of an asset, Part 7 and this paragraph apply as if the deemed realisation had been of a separate asset representing a corresponding part of the asset, and any necessary apportionments shall be made accordingly. 20

Recovery of degrouping charge from another group company or controlling director

- 68 (1) This paragraph applies where –
- (a) a company (“the taxpayer company”) is liable to a degrouping charge, 25
- (b) an amount of corporation tax has been assessed on the company for the relevant accounting period, and
- (c) the whole or part of that amount is unpaid at the end of the period of six months after the time when it became payable. 30
- (2) The following persons may be required, by notice under paragraph 69, to pay the amount of corporation tax referable to the degrouping charge or, if less, the amount of the unpaid tax –
- (a) if the taxpayer company was a member of a group at the relevant time – 35
- (i) a company that was at that time the principal company of the group, and
- (ii) any other company that at any time in the period of twelve months ending with the relevant time was a member of that group and owned the relevant asset or any part of it; 40
- (b) if at the relevant time the taxpayer company is not resident in the United Kingdom but carries on a trade in the United Kingdom through a branch or agency, any person who is, or during the period of twelve months ending with that time was, a controlling director of the taxpayer company or of a company that has, or within that period had, control of the taxpayer company. 45
- (3) For the purposes of this paragraph –

- (a) the relevant accounting period is the accounting period in which the degrouping charge falls to be brought into account by the taxpayer company;
- (b) the relevant time is –
- (i) in a case within paragraph 58, when the taxpayer company ceased to be a member of the group; 5
 - (ii) in a case within paragraph 60, when the taxpayer company ceased to satisfy the qualifying condition;
 - (iii) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), the time that would have been the relevant time under sub-paragraph (i) or (ii) if there had been no such election; 10
- (c) the relevant asset is the asset in respect of which the degrouping charge arises.
- (4) The amount of corporation tax referable to a degrouping charge is the difference between – 15
- (a) the tax in fact payable for the relevant accounting period, and
 - (b) the tax that would have been payable for that period in the absence of the degrouping charge.
- (5) References in this paragraph to a degrouping charge are to – 20
- (a) a credit required to be brought into account under paragraph 58(3) or 60(3), or
 - (b) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), a credit required to be brought into account as a result of the election. 25
- (6) In this paragraph –
- “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); 30
 - “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988); and
 - “group” and “principal company” have the meaning that would be given by Part 8 of this Schedule if in that Part for references to 75% subsidiaries there were substituted references to 51% subsidiaries. 35

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

- 69 (1) The Inland Revenue may serve a notice on a person within paragraph 68(2) requiring him, within 30 days of the service of the notice, to pay – 40
- (a) the amount of the tax referable to the degrouping charge, or
 - (b) if less, the amount that remains unpaid of the corporation tax payable by the taxpayer company for the relevant accounting period.
- (2) The notice must state – 45
- (a) the amount of the tax referable to the degrouping charge,
 - (b) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid and the date when it first become payable, and

- (c) the amount required to be paid by the person on whom the notice is served.
- (3) The notice has effect –
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and 5
- (b) for the purposes of appeals,
as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (4) In section 87A(3) of the Taxes Management Act 1970 (c. 9) (date from which interest runs in the case of an assessment of a company's tax on another person), for "or Schedule 28 to the Finance Act 2000" substitute ", Schedule 28 to the Finance Act 2000 or paragraph 69 of Schedule 29 to the Finance Act 2002". 10
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the taxpayer company. 15
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

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

- 70 (1) Any notice under paragraph 69 must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined. 20
- (2) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (c. 36) (determination where no return delivered or return incomplete), the date mentioned in sub-paragraph (1) shall be taken to be the date on which the determination was made. 25
- (3) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in sub-paragraph (1) shall be taken to be the latest of – 30
- (a) the last date on which notice of enquiry may be given into the return containing the self-assessment;
- (b) if notice of enquiry is given, 30 days after the enquiry is completed;
- (c) if more than one notice of enquiry is given, 30 days after the last notice of completion; 35
- (d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;
- (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined. 40
- (4) If the unpaid tax is charged in a discovery assessment (see paragraph 41 of Schedule 18 to the Finance Act 1998), the date mentioned in sub-paragraph (1) shall be taken to be –
- (a) where there is no appeal against the assessment, the date when the tax becomes due and payable; 45
- (b) where there is such an appeal, the date on which the appeal is finally determined.

Payments between group members in respect of reliefs

- 71 (1) This paragraph applies to payments –
- (a) for group roll-over relief, or
 - (b) for the reallocation of a degrouping charge.
- (2) A payment for group roll-over relief means a payment made – 5
- (a) in connection with a claim for relief under Part 7 (roll-over relief in case of realisation and reinvestment) made by virtue of –
 - (i) paragraph 56 (realisation by one group company and reinvestment by another), or
 - (ii) paragraph 57 (acquisition of group company treated as equivalent to acquisition of underlying assets), 10
 - (b) by the company whose proceeds of realisation are reduced as a result of the claim,
 - (c) to a company whose acquisition costs are reduced (in a case within paragraph 56) or the tax written-down value of whose assets is reduced (in a case within paragraph 57) as a result of the claim, 15
 - (d) in pursuance of an agreement between those companies in connection with the claim.
- (3) A payment for the reallocation of a degrouping charge means a payment made – 20
- (a) in connection with an election under paragraph 66 (reallocation of degrouping charge within group),
 - (b) by the company to which the chargeable realisation gain accrues to the company to which as a result of the election the whole or part of that gain is treated as accruing, 25
 - (c) in pursuance of an agreement between those companies in connection with the election.
- (4) A payment to which this paragraph applies –
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and 30
 - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income, provided it does not exceed the amount of the relief.
- (5) For this purpose the amount of the relief is –
- (a) in the case of a payment in connection with a claim for relief under paragraph 56, the amount of the reduction as a result of the claim in the acquisition costs of the company to which the payment is made; 35
 - (b) in the case of a payment in connection with a claim for relief under paragraph 57, the amount of the reduction as a result of the claim in the tax-written down value of the assets of the company to which the payment is made; 40
 - (c) in the case of a payment in connection with an election under paragraph 66, the amount treated as a result of the election as accruing to the company to which the payment is made.

PART 10

EXCLUDED ASSETS

Introduction

- 72 (1) This Part provides for the exclusion from this Schedule of certain assets. Where or to the extent that an asset of any description is so excluded, an option or other right to acquire or dispose of an asset of that description is similarly excluded. 5
- (2) This Part provides for three kinds of exclusion—
- (a) assets within paragraphs 73 to 77 are entirely excluded from this Schedule; 10
 - (b) assets within paragraphs 78 to 81 are excluded from the provisions of this Schedule except as regards royalties;
 - (c) assets within paragraph 82 or 83 are excluded from the provisions of this Schedule to the extent specified in the paragraph concerned.
- (3) Where by virtue of any of those paragraphs an asset is excluded to the extent that— 15
- (a) it represents certain rights, or
 - (b) it is an asset of a certain description, or
 - (c) it is held for certain purposes, or
 - (d) it represents expenditure of a certain kind, 20
- the provisions of this Schedule apply as if there were a separate asset representing so much of the asset as is not so excluded.
- (4) The other provisions of the Corporation Tax Acts have effect as if there were a separate asset representing so much of the asset as is excluded.
- (5) Any apportionment necessary for the purposes of sub-paragraphs (3) and (4) shall be made on a just and reasonable basis. 25

Assets entirely excluded: rights over tangible assets

- 73 This Schedule does not apply to an intangible fixed asset to the extent that it represents—
- (a) rights enjoyed by virtue of an estate, interest or right in or over land, or 30
 - (b) rights in relation to tangible movable property.

Assets entirely excluded: oil licences

- 74 (1) This Schedule does not apply to an oil licence or an interest in an oil licence.
- (2) In sub-paragraph (1) an “oil licence” means a UK oil licence or a foreign oil concession. 35
- (3) In this paragraph—
- “UK oil licence” means a licence under—
- (a) Part I of the Petroleum Act 1998 (c. 17) (“the 1998 Act”), or
 - (b) the Petroleum Production (Northern Ireland) Act 1964 (c. 28 (N.I.)) (“the 1964 Act”), 40
- authorising the winning of oil; and

- “foreign oil concession” means any right that –
- (a) is a right to search for or win oil that exists in its natural condition in a place to which neither the 1998 Act nor the 1964 Act applies, and
 - (b) is conferred or exercisable (whether or not under a licence) in relation to a particular area. 5
- (4) In sub-paragraph (1) “interest in an oil licence” includes, if there is an agreement that –
- (a) relates to oil from the whole or a part of the licensed area, and
 - (b) was made before the extraction of the oil to which it relates, any entitlement under the agreement to, or to a share of, that oil or the proceeds of its sale. 10
- (5) In sub-paragraph (4)(a) “licensed area” means –
- (a) in relation to a UK oil licence, the area to which the licence applies, and
 - (b) in relation to a foreign oil concession, the area in relation to which the right to search for or win oil is conferred or exercisable under the concession. 15
- (6) In this paragraph “oil” –
- (a) in relation to a UK oil licence, means any substance won or capable of being won under the authority of a licence granted under Part 1 of the 1998 Act or the 1964 Act, other than methane gas won in the course of making and keeping mines safe, and
 - (b) in relation to a foreign oil concession, means any petroleum (as defined by section 1 of the 1998 Act). 20 25

Assets entirely excluded: financial assets

- 75 (1) This Schedule does not apply to financial assets.
- (2) “Financial asset” here has the meaning it has for accounting purposes.
- (3) The expression includes –
- (a) money debts within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) (see section 81(2) of that Act),
 - (b) qualifying contracts within Chapter 2 of Part 4 of the Finance Act 1994 (c. 9) (financial instruments) (see sections 147 to 148 of that Act),
 - (c) contracts or policies of insurance or capital redemption policies, and
 - (d) rights under a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (c. 8) (see section 235 of that Act). 30 35

Assets entirely excluded: rights in companies, trusts, etc

- 76 (1) This Schedule does not apply to an asset to the extent that it represents –
- (a) shares or other rights in relation to the profits, governance or winding up of a company,
 - (b) rights under a trust, or
 - (c) the interest of a partner in a partnership. 40

(2)	Sub-paragraph (1)(b) does not apply to rights that for accounting purposes fall to be treated as representing an interest in trust property that is an intangible fixed asset to which this Schedule applies.	
(3)	Sub-paragraph (1)(c) does not apply to an interest that for accounting purposes falls to be treated as representing an interest in partnership property that is an intangible fixed asset to which this Schedule applies.	5
<i>Assets entirely excluded: non-commercial purposes etc</i>		
77	This Schedule does not apply to an intangible fixed asset to the extent that it is held –	
	(a) for a purpose that is not a business or other commercial purpose of the company, or	10
	(b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.	
<i>Assets excluded except as regards royalties: life assurance business</i>		
78	(1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset to the extent that it is held by an insurance company for the purposes of its life assurance business.	15
	(2) Sub-paragraph (1) does not apply to computer software.	
<i>Assets excluded except as regards royalties: mutual trade or business</i>		
79	(1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset to the extent that it is held for the purposes of any mutual trade or business.	20
	(2) Sub-paragraph (1) does not apply to life assurance business.	
<i>Assets excluded except as regards royalties: films and sound recordings</i>		
80	(1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on the production or acquisition of a master version of a film or sound recording.	25
	(2) For this purpose “master version” –	
	(a) in relation to a film has the meaning given by section 40A(5) of the Finance (No. 2) Act 1992 (c. 48) (revenue nature of expenditure on master version of films); and	30
	(b) in relation to a sound recording means a master tape or master audio disc of the recording.	
<i>Assets excluded except as regards royalties: computer software treated as part of cost of related hardware</i>		
81	Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on computer software that falls to be treated for accounting purposes as part of the costs of the related hardware.	40

Assets excluded to extent specified: research and development

- 82 (1) This paragraph applies to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on research and development.
- (2) The following provisions of this Schedule do not apply to such an asset – 5
- (a) Part 2 (debits in respect of intangible fixed assets) does not apply, except for paragraph 12 (debit on reversal of previous accounting gain) so far as it relates to credits previously brought into account under paragraph 14 (receipts recognised as they accrue);
- (b) Part 3 (credits in respect of intangible fixed assets) does not apply, except for paragraph 14. 10
- (3) Part 4 (debits and credits on realisation of intangible fixed asset) applies as if the cost of the asset did not include any expenditure on research and development.
- (4) In this paragraph “research and development” has the meaning given by section 837A of the Taxes Act 1988 and includes oil and gas exploration and appraisal. 15

Assets excluded to extent specified: election to exclude capital expenditure on computer software

- 83 (1) This paragraph applies to an intangible fixed asset held by a company to the extent that it represents capital expenditure by the company on computer software in respect of which the company has made an election under this paragraph. 20
- (2) An insurance company that carries on life assurance business may also make an election under this paragraph in respect of so much of any capital expenditure on computer software as is not referable to its basic life assurance and general annuity business. 25
- (3) The effect of an election under this paragraph is as follows –
- (a) Part 2 does not apply to the asset, except for paragraph 12 (debit on reversal of previous accounting gain) so far as it relates to credits previously brought into account under paragraph 14 (receipts recognised as they accrue); 30
- (b) Part 3 does not apply to the asset, except for paragraph 14;
- (c) Part 4 (debits and credits on realisation of intangible fixed asset) applies as if the cost of the asset did not include any expenditure in respect of which an election under this paragraph has been made; 35
- (d) a credit shall be brought into account under this Schedule in respect of the asset only to the extent that the receipts to which the credit relates do not fall to be taken into account in computing disposal values under section 72 of the Capital Allowances Act 2001 (c. 2) 40
- (4) Any election under this paragraph must specify the expenditure to which it relates, and must be made –
- (a) in writing,
- (b) to the Inland Revenue,
- (c) not more than two years after the end of the accounting period in which the expenditure was incurred. 45
- (5) An election under this paragraph is irrevocable.

- (6) The references in this paragraph –
 (a) to capital expenditure, and
 (b) to the time when such expenditure is incurred,
 have the same meaning as if this paragraph were contained in the Capital Allowances Act 2001 (c. 2).

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PART 11

TRANSFER OF BUSINESS OR TRADE

Company reconstruction involving transfer of business

- 84 (1) This paragraph applies where –
- (a) a scheme of reconstruction involves the transfer of the whole or part of the business of one company (“the transferor”) to another company (“the transferee”), and 10
- (b) the transferor receives no part of the consideration for the transfer (otherwise than by the transferee taking over the whole or part of the liabilities of the business). 15
- For this purpose “scheme of reconstruction” has the same meaning as in section 136 of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (2) If the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 139). 20
- (3) If a transfer falls within sub-paragraph (1) and also within paragraph 55 (transfers within a group), that paragraph applies and this paragraph does not. 25
- (4) This paragraph does not apply if the transferor or the transferee is –
- (a) a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or
- (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief). 30
- (5) This paragraph applies only if the reconstruction –
- (a) is effected for bona fide commercial reasons, and
- (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax. 35
- (6) The requirements of sub-paragraph (4) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferee, notified that company that they are satisfied that the requirements of that sub-paragraph will be met. 40
- For the procedure on such an application, see paragraph 88.

Transfer of UK trade between companies resident in different EU member states

- 85 (1) This paragraph applies where –

-
- (a) an EU company resident in one member State (“the transferor”) transfers the whole or part of a trade carried on by it in the United Kingdom to an EU company resident in another member State (“the transferee”),
- (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor, and 5
- (c) a claim is made under this paragraph by the transferor and the transferee.
- (2) If the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 139). 10
- (3) For the purposes of this paragraph a company is regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge. 15
For this purpose a company is treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States. 20
- (4) This paragraph applies only if the transfer of the trade or part –
- (a) is effected for bona fide commercial reasons, and
- (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax. 25
- (5) The requirements of sub-paragraph (4) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor and the transferee, notified those companies that they are satisfied that the requirements of that sub-paragraph will be met. 30
For the procedure on such an application, see paragraph 88.
- (6) In this paragraph –
- (a) “EU company” means a body incorporated under the law of a member State; and
- (b) “securities” includes shares.
- Postponement of charge on transfer of assets to non-resident company.* 35
- 86 (1) This paragraph applies where –
- (a) a company resident in the United Kingdom and carrying on a trade outside the United Kingdom through a branch or agency (“the transferor”) transfers that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) to a company not resident in the United Kingdom (“the transferee”), 40
- (b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee to the transferor, and 45
- (c) the shares so issued, either alone or taken together with any other shares in the transferee already held by the transferor, amount in all

- to not less than one quarter of the ordinary share capital of the transferee.
- (2) If the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer (“relevant assets”), the transferor may claim that this Schedule shall have effect in accordance with the following provisions. 5
- (3) If the proceeds of realisation of a relevant asset exceed the cost of the asset recognised for tax purposes, the proceeds of realisation are treated as reduced –
- (a) if the securities are the whole consideration for the transfer, by the amount of the excess, and 10
 - (b) if the securities are not the whole of that consideration, by the appropriate proportion of the excess.
- For this purpose “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time. 15
- (4) If at any time after the transfer the transferor realises the whole or part of the securities held by it immediately before that time, the transferor shall bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the aggregate deferred gain. 20
- For this purpose –
- “the appropriate proportion” means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal; and
 - “the aggregate deferred gain” means the aggregate of the amounts by which the proceeds of realisation of relevant assets were reduced under sub-paragraph (3), so far as not already taken into account under this sub-paragraph or sub-paragraph (5). 25
- (5) If at any time within six years after the transfer the transferee realises any of the relevant assets held by it immediately before that time, the transferor shall bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the aggregate deferred gain. 30
- For this purpose –
- “the appropriate proportion” means the proportion that the deferred gain attributable to the relevant assets realised bears to the deferred gain attributable to the relevant assets held immediately before the time of the realisation; 35
 - “the aggregate deferred gain” means the aggregate of the amounts by which the proceeds of realisation of relevant assets were reduced under sub-paragraph (3), so far as not already taken into account under this sub-paragraph or sub-paragraph (4); and 40
 - “the deferred gain attributable to” any relevant assets means the aggregate of the amounts by which the proceeds of realisation of those assets were reduced under sub-paragraph (3).
- (6) There shall be disregarded – 45
- (a) for the purposes of sub-paragraph (4), any disposal within section 171 of the Taxation of Chargeable Gains Act 1992 (c. 12) (transfers within a group); and
 - (b) for the purposes of sub-paragraph (5), any transfer by one member of a group (within the meaning of Part 8 of this Schedule) to another. 50

- (7) Where a person acquires securities or an asset on a disposal disregarded under sub-paragraph (6) (and without there having been a previous disposal not so disregarded), a subsequent disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, the transferee. 5
- (8) This paragraph applies only if the transfer of the trade or part –
(a) is effected for bona fide commercial reasons, and
(b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax. 10
- (9) The requirements of sub-paragraph (8) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor, notified that company that they are satisfied that the requirements of that sub-paragraph will be met.
For the procedure on such an application, see paragraph 88. 15
- (10) No claim may be made under this paragraph as regards a transfer in relation to which a claim is made under paragraph 87 (transfer of non-UK trade).

Transfer of non-UK trade

- 87 (1) This paragraph applies where –
(a) an EU company resident in the United Kingdom (“the transferor”) transfers to an EU company resident in another member State (“the transferee”) the whole or part of a trade that, immediately before the time of the transfer, the transferor carried on in a member State other than the United Kingdom (“the other member State”) through a branch or agency, 20
(b) the transfer –
(i) includes the whole of the assets of the transferor used for the purposes of the trade or part (or the whole of those assets other than cash), and
(ii) is wholly or partly in exchange for securities issued by the transferee to the transferor, 30
(c) the transfer includes intangible fixed assets –
(i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and
(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and 35
(d) the transferor makes a claim under this paragraph.
- (2) Where tax would have been chargeable under the law of the other member State in respect of the transfer of those assets but for the Mergers Directive, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if the amount of tax, calculated on the required basis, that would have been payable under that law in respect of the transfer of those assets but for that Directive, were tax payable under that law. 40
- (3) For this purpose “the required basis” is that – 45
(a) so far as permitted under the law of the other member State, any losses arising on the transfer are set against any gains so arising, and

- (b) any relief available to the transferor under that law has been duly claimed.
- (4) In this paragraph –
 “EU company” means a body incorporated under the law of a member State; 5
 “the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (No. 90/434/EEC); 10
 “securities” includes shares.
- (5) For the purposes of this paragraph a company is regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.
 For this purpose a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States. 15
- (6) No claim may be made under this paragraph as regards a transfer in relation to which a claim is made under paragraph 86 (postponement of charge on transfer of assets to non-resident company). 20
- (7) This paragraph applies only if the transfer of the trade or part –
 (a) is effected for bona fide commercial reasons, and
 (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax. 25
- (8) The requirements of sub-paragraph (7) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor, notified that company that they are satisfied that the requirements of that sub-paragraph will be met. 30
 For the procedure on such an application, see paragraph 88.

Procedure on application for clearance

- 88 (1) This paragraph applies in relation to an application under paragraph 84(6), 85(5), 86((9) or 87(8).
- (2) The application must be in writing and must contain particulars of the operations that are to be effected. 35
- (3) The Inland Revenue may, within 30 days of the receipt of the application or of any further particulars previously required under this sub-paragraph, by notice require the applicant to furnish further particulars for the purpose of enabling the Inland Revenue to make their decision. 40
 If any such notice is not complied with within 30 days or such longer period as the Inland Revenue may allow, the Inland Revenue need not proceed further on the application.
- (4) The Inland Revenue shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under sub-paragraph (3), within 30 days of the notice being complied with. 45

- (5) If the Inland Revenue notify the applicant that they are not satisfied as mentioned in paragraph 84(6), 85(5), 86(9) or 87(8) or do not notify their decision to the applicant within the time required by sub-paragraph (4), the applicant may within 30 days of the notification or of that time require the Inland Revenue to transmit the application, together with any notice given and further particulars furnished under sub-paragraph (3), to the Special Commissioners. 5
- In that event any notification by the Special Commissioners shall have effect for the purposes of paragraph 84(6), 85(5), 86(9) or 87(8) as if it were a notification by the Inland Revenue. 10
- (6) If any particulars furnished under this paragraph do not fully and accurately disclose all facts and considerations material for the decision of the Inland Revenue or the Special Commissioners, any resulting notification by the Inland Revenue or the Commissioners is void.

Transfer of life assurance business 15

- 89 (1) This paragraph applies where there is –
- (a) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme, or
 - (b) a transfer between two companies that is a qualifying overseas transfer within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act 1988 (transfer of business of overseas life insurance company),
- and the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the transferor company immediately before the transfer and in relation to the successor company immediately after the transfer. 25
- (2) Where this paragraph applies the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 139).
- (3) In this paragraph – 30
- “contracts of long-term insurance” means contracts that fall within Part 2 of Schedule 1 to the Finance Services and Markets Act (Regulated Activities) Order 2001 (SI 2001/544); and
 - “insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8) or an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section. 35

Transfer of business of building society to company

- 90 (1) Where –
- (a) there is a transfer of the whole of a building society’s business to a company (“the successor company”) in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986 (c. 53), and 40
 - (b) the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the society immediately before the transfer and in relation to the successor company immediately after the transfer, 45

- the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 139).
- (2) If because of the transfer a company ceases to be a member of the same group as the society, that event shall not cause paragraph 58 or 60 (deemed realisation and reacquisition) to have effect as respects any asset acquired by the company from the society or any other member of the same group. 5
- (3) Where the society and the successor company are members of the same group at the time of the transfer but later cease to be so, that later event shall not cause paragraph 58 or 60 to have effect as respects –
- (a) any asset acquired by the successor company on or before the transfer from the society or any other member of the same group, or 10
- (b) any asset acquired from the society or any other member of the same group by a company other than the successor company that is a member of the same group at the time of the transfer.
- (4) Where a company which is a member of the same group as the society at the time of the transfer – 15
- (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
- (b) subsequently ceases to be a member of that group,
- paragraph 58 has effect on that later event as respects any asset to which this sub-paragraph applies that is acquired by the company otherwise than from the successor company as if it had been acquired from the successor company. 20
- (5) Sub-paragraph (4) applies to any asset acquired by the company from the society, or from another company which is a member of the same group at the time of the transfer, when the company and the society, or the company, the society and the other company, were members of the same group. 25
- (6) Sub-paragraph (4) does not apply where –
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa, and 30
- (b) those companies cease simultaneously to be members of the same group as the successor company but continue to be members of the same group as one another.

Amalgamation of or transfer of engagements by certain societies

- 91 (1) Where – 35
- (a) there is an amalgamation of two or more societies to which this paragraph applies or a transfer of engagements from one such society to another, and
- (b) in the course of or as part of the amalgamation or transfer of engagements, there are transferred from one society (“the transferor”) to another (“the transferee”) intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, 40
- the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 139). 45
- (2) The societies to which this paragraph applies are –
- (a) a building society,

- (b) a registered industrial and provident society within the meaning of section 486 of the Taxes Act 1988, and
- (c) a co-operative association in relation to which subsections (1) and (8) of that section have effect as they have effect in relation to a registered industrial and provident society.

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PART 12

TRANSACTIONS BETWEEN RELATED PARTIES

Transfer between company and related party treated as being at market value

- 92 (1) Where there is a transfer of an intangible asset from a company to a related party or to a company from a related party and, in either case, the asset is a chargeable intangible asset – 10
- (a) in relation to the transferor immediately before the transfer, or
 - (b) in relation to the transferee immediately after the transfer,
- the transfer is treated for all purposes of the Taxes Acts (as regards both the transferor and the transferee) as being at market value. 15
This is subject to the following two exceptions.
- (2) The first exception is where the consideration for the transfer –
- (a) falls to be adjusted for tax purposes under Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), or
 - (b) falls within that Schedule without falling to be so adjusted. 20
- (3) For the purposes of sub-paragraph (2)(b) the consideration for a transfer falls within Schedule 28AA to the Taxes Act 1988 without falling to be adjusted under that Schedule in a case where –
- (a) the conditions in paragraph 1(1) of that Schedule are met,
 - (b) the actual provision does not differ from the arm’s length provision, and 25
 - (c) if the actual provision had differed from the arm’s length provision in such a way as to confer a potential advantage in relation to United Kingdom taxation as defined in paragraph 5(1) of that Schedule, paragraph 5(2) of that Schedule would not have applied (under which there is taken to be no such potential advantage if certain conditions are met). 30
- (4) The second exception is where any provision of this Schedule applies so as to make the transfer tax-neutral.
- (5) In sub-paragraph (1) “market value” means the price the asset might reasonably be expected to fetch on a sale in the open market. 35

Exclusion of roll-over relief in case of part realisation involving related party

- 93 Part 7 (roll-over relief in case of reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if a person who is a related party in relation to the company acquires an interest of any description – 40
- (a) in that asset, or
 - (b) in an asset whose value is derived in whole or in part from that asset, as a result of, or in connection with, the part realisation.

Delayed payment of royalty payable by company to related party

- 94 (1) This paragraph applies where a royalty is payable by a company to or for the benefit of a related party.
- (2) If—
- (a) the royalty is not paid in full within the period of twelve months after the end of the period of account in which a debit in respect of it is recognised by the company for accounting purposes, and 5
 - (b) credits representing the full amount of the royalty are not brought into account under this Schedule in any accounting period by the person to whom it is payable, 10
- the royalty shall be brought into account for the purposes of this Schedule only when it is paid.

Meaning of “related party”

- 95 (1) For the purposes of this Schedule a person (“P”) is a “related party” in relation to a company (“C”) in the following cases: 15
- Case One*
- P is a company and either—
- (a) P has control of, or holds a major interest in, C, or
 - (b) C has control of, or holds a major interest in, P.
- Case Two* 20
- P is a company and P and C are both under the control of the same person (but see sub-paragraph (2)).
- Case Three*
- C is a close company and P is—
- (a) a participator in C, or 25
 - (b) an associate of a participator in C.
- (2) Case Two does not apply if the person controlling both P and C is—
- the Crown,
 - a Minister of the Crown or a government department,
 - the Scottish Ministers, 30
 - the National Assembly for Wales,
 - a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
 - a foreign sovereign power, or
 - an international organisation. 35

Meaning of “control” and “major interest”

- 96 (1) For the purposes of this Part “control”, in relation to a company, is the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or 40
 - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,
- that the affairs of the company are conducted in accordance with his wishes.

- (2) For the purposes of this Part, a person has a “major interest” in a company if –
- (a) he and one other person together have control of that company, and
 - (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total. 5
- The reference in paragraph (a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in sub-paragraph (1).
- (3) Paragraphs 97 to 99 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Part whether a person has control of, or a major interest in, a company. 10

Rights and powers to be taken into account: general

- 97 (1) There shall be attributed to each relevant person –
- (a) rights and powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire; 15
 - (b) rights and powers of other persons, to the extent that they are required, or may be required, to be exercised in any one or more of the following ways –
 - (i) on his behalf;
 - (ii) under his direction; 20
 - (iii) for his benefit;
 - (c) rights and powers of a person connected with him;
 - (d) rights and powers that would be attributed to a person connected with him if that person were a relevant person.
- (2) Sub-paragraph (1)(b) does not apply, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan. 25
- (3) In sub-paragraphs (1)(b) to (d), the references to a person’s rights and powers include rights or powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire. 30
- (4) In this paragraph a “relevant person” means a person whose rights or powers are relevant to the determination of the question whether a person has control of or a major interest in a company.

Rights and powers to be taken into account: rights and powers held jointly

- 98 (1) References in this Part of this Schedule – 35
- (a) to rights and powers of a person, or
 - (b) to rights and powers that a person is or will become entitled to acquire,
- include rights or powers that are exercisable by that person, or when acquired will be exercisable by him, only jointly with one or more other persons. 40
- (2) Sub-paragraph (1) has effect subject to paragraph 99 (partnerships).

Rights and powers to be taken into account: partnerships

- 99 (1) The rights and powers of a person as a member of a partnership shall be disregarded unless he has control of or a major interest in the partnership.
- (2) Whether a person has control of or a major interest in a partnership shall be determined in accordance with paragraphs 96 to 98 as in relation to a company. 5
 For this purpose references in those paragraphs to any other company shall be read as including any other partnership.

Meaning of “participator” and “associate”

- 100 (1) In this Part “participator”, in relation to a close company, has the meaning it has for the purposes of Part 11 of the Taxes Act 1988 (close companies) (see section 417(1) of that Act), except that it does not include a person by reason only of his being a loan creditor of the company within the meaning of that Part (see section 417((7) to (9) of that Act). 10
- (2) In this Part “associate”, in relation to a participator in a close company, has the meaning given by section 417(3) of that Act. 15

Connected persons

- 101 (1) This paragraph explains what is meant in this Part when a person is referred to as being connected with another person. 20
 Any provision that one person is connected with another means that they are connected with one another.
- (2) A person is connected with an individual if that person is the individual’s wife or husband, or is a relative, or the wife or husband or a relative, of the individual or of the individual’s wife or husband. 25
 For the purposes of this sub-paragraph “relative” means brother, sister, ancestor or lineal descendant.
- (3) A person in his capacity as trustee of a settlement is connected with— 30
 (a) any individual who in relation to the settlement is a settlor,
 (b) any person who is connected with such an individual, and
 (c) any body corporate that is connected with that settlement.
 For the purposes of this sub-paragraph “settlement” and “settlor” have the same meaning as in Chapter 1A of Part 15 of the Taxes Act 1988 (settlements: liability of settlor) (see section 660G(1) and (2) of that Act).
- (4) For the purposes of sub-paragraph (3) above a body corporate is connected with a settlement if— 35
 (a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement, or
 (b) it is controlled by a company falling within paragraph (a) above.
- (5) A person is connected with a company if they are related parties within Case One or Case Two in paragraph 95(1) above. 40
- (6) For the purposes of sub-paragraph (5) above and for the purposes of paragraph 95 as it applies for the purposes of that sub-paragraph— 45
 (a) “company” includes any body corporate or unincorporated association, but does not include a partnership; and

- (b) a unit trust scheme shall be treated as if it were a company and as if the rights of the unit holders were shares in the company.

PART 13

SUPPLEMENTARY PROVISIONS

Treatment of grants and other contributions to expenditure 5

- 102 (1) This paragraph applies where a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.
- (2) A gain recognised in the company's profit and loss account in respect of the grant or other payment is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset. 10
- (3) This paragraph does not apply to a grant within paragraph 103 (grants to be left out of account for tax purposes).

Grants to be left out of account for tax purposes 15

- 103 (1) This paragraph applies to –
- (a) grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants); and
- (b) grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part. 20
- These are referred to below in this paragraph as “exempt grants”.
- (2) Any gain recognised in the company's profit and loss account in respect of an exempt grant shall be disregarded for the purposes of this Schedule.
- (3) Where as a result of an exempt grant being brought into account by a company there is a reduction – 25
- (a) in the amount of a loss recognised in the company's profit and loss account, or
- (b) in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes,
- the amount of the reduction shall be added back for the purposes of this Schedule. 30

Finance leasing etc

- 104 (1) The Treasury may make provision by regulations as to the application of this Schedule in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease. 35
- (2) The regulations may provide –
- (a) that, notwithstanding that the asset is accounted for by the finance lessor as a financial asset, this Schedule shall apply as if the asset were an intangible fixed asset of the lessor and not a financial asset;
- (b) that this Schedule shall apply as if the amount at which the asset is recognised in the finance lessor's balance sheet were capitalised expenditure on an intangible fixed asset, but that – 40

-
- (i) no election may be made under paragraph 10 (election for writing down on fixed rate basis) in respect of that amount; and
 - (ii) that amount is not to be treated as capitalised expenditure for the purposes of paragraph 39(1)(b) (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets); 5
 - (c) that where an asset formerly recognised by the lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and accordingly comes to be accounted for as a financial asset) the value of the asset so created is recognised as realisation proceeds of the intangible fixed asset on the change of accounting treatment; 10
 - (d) that assets partially excluded from this Schedule by paragraph 78 to 81 (assets excluded except as regards royalties) are entirely excluded from this Schedule as regards the finance lessor if they are subject to a finance lease and are accounted for by the lessor as financial assets; 15
 - (e) for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which he is within the charge to income tax;
 - (f) that an intangible asset counts as an existing asset in the hands of the finance lessor if the finance lessee – 20
 - (i) is a company for whom the asset was the whole or part of an existing asset, or
 - (ii) a person who is a related party in relation to such a company.
 - (3) The regulations may contain such consequential, supplementary, incidental and transitional provision, including provision modifying the operation of other provisions of the Corporation Tax Acts, as appears to the Treasury to be appropriate. 25
 - (4) References in this paragraph to a finance lease – 30
 - (a) have the meaning they have for accounting purposes, and
 - (b) include hire-purchase, conditional sale or other arrangements if they are of a similar character to a finance lease.
 - (5) References to the finance lessor or finance lessee have a corresponding meaning.
 - (6) Regulations under this paragraph may be made so as to have effect from 1st April 2002. 35

Assets acquired or realised together

- 105 (1) Any reference in this Schedule to the acquisition or realisation of an asset includes the acquisition or realisation of that asset together with other assets.
- (2) For the purposes of this Schedule assets acquired or realised as a result of one bargain are treated as acquired or realised together even though – 40
 - (a) separate prices are, or purport to be, agreed for separate assets, or
 - (b) there are, or purport to be, separate acquisitions or realisations of separate assets.
- (3) Where assets are acquired together – 45
 - (a) any values allocated to particular assets by the company in accordance with generally accepted accounting practice shall be accepted for the purposes of this Schedule;

- (b) if no such values are allocated by the company, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as referable to that asset.
- (4) Where assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as proceeds of the realisation of that asset. 5

Deemed market value acquisition: adjustment of amounts in case of nil accounting value

- 106 (1) This paragraph applies where a company is treated for the purposes of this Schedule as acquiring an asset at market value but the accounting value of the asset transferred, in the hands of the transferee, is nil. 10
- (2) Where this paragraph applies –
- (a) any reference in this Schedule to –
- (i) the cost of the asset recognised for accounting purposes, 15
- (ii) the accounting value of the asset, or
- (iii) the amount of any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,
- shall be read as references to the cost, value or loss that would have been recognised if the asset had been acquired at market value; and 20
- (b) any revaluation of the asset (as defined in paragraph 15) shall be disregarded.

Treatment of fungible assets

- 107 (1) For the purposes of this Schedule fungible assets of the same kind held by the same person in the same capacity shall be treated as indistinguishable parts of a single asset, growing or diminishing as additional assets of the same kind are created or acquired or some of the assets are realised. 25
- (2) In this Schedule “fungible assets” here means assets of a nature to be dealt in without identifying the particular assets involved.

Asset ceasing to be chargeable intangible asset: deemed realisation at market value 30

- 108 (1) Where an asset ceases to be a chargeable intangible asset in relation to a company –
- (a) on the company ceasing to be resident in the United Kingdom, or
- (b) in the case of a company that is not resident in the United Kingdom, in any circumstances not involving the realisation of the asset by the company, or 35
- (c) on the asset beginning to be held for the purposes of a mutual trade or business,
- this Schedule has effect as if the company had, immediately before the asset ceased to be a chargeable intangible asset in relation to it, realised the asset for its market value at that time and immediately reacquired it at that value. 40
- (2) Sub-paragraph (1) has effect subject to paragraph 109 (postponement of gain in certain cases).

Asset ceasing to be chargeable intangible asset: postponement of gain in certain cases

109 (1) Where –

- (a) paragraph 108 (asset ceasing to be chargeable asset: deemed realisation at market value) applies by reason of a company (“company A”) ceasing to be resident in the United Kingdom, 5
- (b) immediately before company A ceases to be resident in the United Kingdom the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a branch or agency,
- (c) the proceeds of the deemed realisation of the asset exceed the original cost of the asset recognised for tax purposes, 10
- (d) immediately after company A ceases to be resident in the United Kingdom it is a 75% subsidiary of another company (“company B”) that is resident in the United Kingdom, and
- (e) company A and company B so elect by notice given to the Inland Revenue not later than two years after the date when company A ceased to be resident in the United Kingdom, 15

this Schedule has effect as if the proceeds of the deemed realisation of the asset were reduced by the amount of the excess referred to in paragraph (c). The amount of the reduction is referred to below in this paragraph as “the postponed gain”. 20

- (2) If company A subsequently realises the asset before the end of the period of six years after the date on which the company ceased to be resident in the United Kingdom, company B shall bring into account for tax purposes a credit equal to the postponed gain or, in the case of a part realisation, the appropriate proportion of the postponed gain. 25
 The appropriate proportion is given by:

$$\frac{\text{Old Value} - \text{New Value}}{\text{Old Value}}$$

where –

Old Value is the market value of the asset immediately before the part realisation, and
 New Value is the market value of the asset immediately after the part realisation. 30

- (3) Sub-paragraph (2) does not apply –
 - (a) to the extent that the postponed gain has already been brought into account on a previous part realisation, or
 - (b) if the postponed gain has already been brought into account under sub-paragraph (4). 35
- (4) If at any time after company A ceases to be resident in the United Kingdom –
 - (a) it ceases to be a 75% subsidiary of company B on the disposal by that company of ordinary shares of company A, or 40
 - (b) after it has ceased to be such a subsidiary otherwise than on such a disposal, company B disposes of such shares, or
 - (c) company B ceases to be resident in the United Kingdom,
 company B shall bring into account for tax purposes a credit equal to the postponed gain. 45

This sub-paragraph does not apply if, or to the extent that, the postponed gain has already been brought into account under sub-paragraph (2).

- (5) Any credit falling to be brought into account under sub-paragraph (4)(c) shall be brought into account immediately before company B ceases to be resident in the United Kingdom. 5
- (6) A credit brought into account by company B under this paragraph is treated as a non-trading credit for the purposes of Part 6 (how debits and credits are given effect).

Asset becoming chargeable intangible asset

- 110 (1) This paragraph applies where an asset becomes a chargeable intangible asset in relation to a company – 10
- (a) on the company becoming resident in the United Kingdom, or
 - (b) in the case of a company that is not resident in the United Kingdom, on beginning to be held for the purposes of a trade carried on by it in the United Kingdom through a branch or agency, or 15
 - (c) on the asset ceasing to be held for the purposes of a mutual trade or business.
- (2) Where this paragraph applies this Schedule has effect as if the company had acquired the asset, immediately after it became a chargeable intangible asset in relation to the company, for its accounting value at that time. 20

Tax avoidance arrangements to be disregarded

- 111 (1) Tax avoidance arrangements shall be disregarded in determining –
- (a) whether debits are to be brought into account under paragraph 9 (writing down on accounting basis) or the amount of such debits, or
 - (b) whether a credit is to be brought into account under Part 4 (realisation) or the amount of any such credit. 25
- (2) Arrangements are “tax avoidance arrangements” if their main object or one of their main objects is to enable a company –
- (a) to obtain a debit under paragraph 9 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or 30
 - (b) to avoid having to bring a credit into account under Part 4 or to reduce the amount of any such credit.
- (3) In this paragraph –
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and
 - “brought into account” means brought into account for tax purposes. 35

Debits not allowed in respect of expenditure not generally deductible for tax purposes

- 112 (1) No debit may be brought into account for tax purposes under this Schedule in respect of expenditure that is not generally deductible for tax purposes. 40
- (2) Expenditure is “not generally deductible for tax purposes” if, or to the extent that, revenue expenditure of that description incurred for the purposes of a trade would be non-deductible by virtue of –

-
- (a) section 577 of the Taxes Act 1988 (expenditure on business entertainment or gifts),
 - (b) section 577A of that Act (crime-related expenditure),
 - (c) section 578A of that Act (expenditure on expensive hired cars), or
 - (d) section 76(1) to (3) of the Finance Act 1989 (c. 26) (expenditure on providing non-approved non-taxable retirement benefits). 5

Delayed payment of emoluments

113 (1) Where—

- (a) a debit in respect of emoluments is recognised by a company for accounting purposes, and 10
- (b) the emoluments are not paid until after the end of the period of nine months beginning with the end of the period of account in which the debit is recognised,

the emoluments shall be brought into account for the purposes of this Schedule only when they are paid. 15

(2) For the purposes of this paragraph—

- (a) “emoluments” means emoluments allocated either—
 - (i) in respect of particular offices or employments (or both), or
 - (ii) generally in respect of offices or employments (or both); and
- (b) emoluments are paid when they are treated as received (applying the rules in section 202B of the Taxes Act 1988 as for the purposes of section 202A(1)(a) of that Act (receipts basis of assessment for Schedule E)). 20

(3) This paragraph applies to potential emoluments as it applies to emoluments. For this purpose— 25

- (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming emoluments, and
- (b) potential emoluments are regarded as paid when they become emoluments that are paid. 30

(4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.

(5) If a calculation for tax purposes has to be made before the end of the period of nine months mentioned in sub-paragraph (1)(b) and emoluments have not been paid— 35

- (a) it shall be assumed for the purpose of making the calculation that they will not be paid before the end of that period, but
- (b) the calculation shall be adjusted if the emoluments are subsequently paid before the end of that period and a claim is made. 40

Any such claim to adjust a calculation must be made to the Inland Revenue before the end of the period of two years beginning with the end of the period of account concerned.

Delayed payment of pension contributions

114 (1) This paragraph applies where— 45

-
- (a) a debit in respect of pension contributions is recognised by a company for accounting purposes, and
- (b) the contributions are not paid until after the end of the period of account in which the debit is recognised.
- (2) Where this paragraph applies, the contributions shall be brought into account for the purposes of this Schedule only when they are paid. 5
- (3) For the purposes of this paragraph “pension contributions” means –
- (a) sums paid by an employer by way of contributions under a scheme to which section 592 of the Taxes Act 1988 applies (exempt approved schemes), 10
- (b) sums paid to the trustees of such a scheme that are treated for the purposes of that section as employer’s contributions (see subsection (6A) of that section), or
- (c) expenses within section 76(5) or (6) of the Finance Act 1989 (c. 26) (expenses of providing benefits under non-approved retirement benefit scheme). 15
- (4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.
- Bad debts etc* 20
- 115 (1) For the purposes of this Schedule a debt shall be brought into account on the assumption that the amount payable will be paid in full when it becomes due, except to the extent that –
- (a) the debt is bad,
- (b) the debt is estimated to be bad, or 25
- (c) the debt is released as part of a statutory insolvency arrangement.
- (2) In sub-paragraph (1)(c) a “statutory insolvency arrangement” means –
- (a) a voluntary arrangement that has taken effect under or by virtue of the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19)), or 30
- (b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985 (c. 6) or Article 418 of the Companies (Northern Ireland) Order 1986 (SI 1986/1032 (N.I. 6)).
- (3) Where a debt is released as mentioned in sub-paragraph (1)(c) any gain in respect of the release brought into account for accounting purposes by the debtor shall be disregarded for the purposes of this Schedule. 35
- (4) Any other gain in respect of an unpaid debt in respect of an intangible fixed asset that is brought into account by the debtor for accounting purposes is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset. 40
- (5) Any adjustment required by this paragraph of an accounting gain or loss that is partly referable to an amount affected by this paragraph and partly to other matters shall be made on a just and reasonable basis.
- Assumptions for computing chargeable profits of controlled foreign companies*
- 116 (1) In computing the amount mentioned in section 747(6) of the Taxes Act 1988 (chargeable profits of controlled foreign company) the following 45

- assumptions shall be made for the purpose of applying the provisions of this Schedule.
- (2) It shall be assumed that any intangible fixed asset acquired or created by the company before the beginning of the first accounting period –
- (a) in respect of which an apportionment under section 747(3) falls to be made, or
 - (b) which is an ADP exempt period,
- was acquired or created by the company at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
- (3) Notwithstanding paragraph 4(1) of Schedule 24 of the Taxes Act 1988 (assumption that all available reliefs have been claimed), it shall be assumed that the company has not claimed any relief under Part 7 (roll-over relief in case of reinvestment) or made any provisional declaration of entitlement to such relief.
- But this assumption does not apply, if notice is given in accordance with paragraph 4(2) of that Schedule requesting that it should not apply, to such claims, and to such extent, as may be specified in the notice.
- (4) Expressions used in this paragraph that are defined for the purposes of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies) have the same meaning in this paragraph.
- (5) The assumption in sub-paragraph (2) above does not affect the determination of the question whether this Schedule applies to an asset in accordance with paragraph 118 (application of Schedule to assets created or acquired after commencement).

PART 14

COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement date

- 117 (1) The commencement date for the purposes of this Schedule is 1st April 2002.
- (2) In this Part –
- “after commencement” means on or after that date and “before commencement” means before that date; and
 - “the existing law” means the law as it was before commencement.

Application of Schedule to assets created or acquired after commencement

- 118 (1) Except as otherwise expressly provided, the provisions of this Schedule apply only to intangible fixed assets of a company (“the company”) that –
- (a) are created by the company after commencement, or
 - (b) are acquired by the company after commencement from a person who at the time of the acquisition is not a related party in relation to the company, or
 - (c) are acquired by the company after commencement from a person who at the time of the acquisition is a related party in relation to the company in the cases specified in sub-paragraph (2).

- As to when assets are regarded as created or acquired, see paragraphs 120 to 125.
- (2) The cases mentioned in sub-paragraph (1)(c) in which this Schedule applies to assets acquired by the company after commencement from a related party are – 5
- (a) where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition;
 - (b) where the asset is acquired from a person (“the intermediary”) who acquired the asset after commencement from a third person – 10
 - (i) who was not at the time of that acquisition a related party in relation to the intermediary or, where the intermediary was not a company, a company in relation to which the intermediary was a related party, and
 - (ii) who is not, at the time of the acquisition by the company, a related party in relation to the company; 15
 - (c) where the asset was created, whether by the person from whom it is acquired or any other person, after commencement.
- (3) Intangible fixed assets to which, by virtue of sub-paragraph (1), this Schedule does not apply in the absence of express provision to that effect are referred to in this Schedule as “existing assets”. 20
- (4) In relation to assets to which paragraph 107 applies (fungible assets treated as single asset) sub-paragraph (1) has effect subject to paragraph 126.
- (5) The following paragraphs contain provision for the application of this Schedule in relation to certain existing assets – 25
- paragraphs 127 and 128 (application of Schedule to certain existing assets);
 - paragraphs 129 to 131 (application of roll-over relief in relation to certain existing assets).
- (6) Nothing in this paragraph shall be read as restricting the application of this Schedule in accordance with paragraph 119 (application of Schedule to royalties). 30

Application of Schedule to royalties

- 119 (1) This Schedule –
- (a) applies to royalties recognised for accounting purposes after commencement, and
 - (b) does not apply to royalties recognised for accounting purposes before commencement,
- subject to the following provisions.
- (2) To the extent that royalties have been brought into account before commencement, they shall not be brought into account again under this Schedule after commencement. 40
- (3) To the extent that royalties would have been brought into account before commencement if the provisions of this Schedule had been in force, and were not so brought into account, they shall be brought into account immediately after commencement. 45
- (4) For the purposes of this paragraph an amount is “brought into account” if-

- (a) it is brought into account for tax purposes, or
- (b) it would have been so brought into account if the person concerned had been within the charge to corporation tax.

Assets regarded as created or acquired when expenditure incurred

- 120 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to all intangible assets except those to which paragraph 121 or 122 applies (certain internally-generated assets). 5
- (2) An intangible asset to which this paragraph applies is regarded as created or acquired after commencement to the extent that expenditure on its creation or acquisition is incurred after commencement. 10
 As to whether expenditure on the creation or acquisition of the asset was incurred after commencement, see paragraphs 123 to 125.
- (3) If only part of the expenditure on the creation or acquisition of the asset is incurred after commencement – 15
- (a) this Schedule has effect as if there were a separate asset representing the expenditure so incurred, and
 - (b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the expenditure not so incurred. 20
- Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

Internally-generated goodwill: whether created before or after commencement

- 121 For the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) internally-generated goodwill is regarded as created before (and not after) commencement if the business in question was carried on at any time before commencement by the company or a related party. 25

Certain other internally-generated assets: whether created before or after commencement

- 122 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to an internally-generated asset representing expenditure that under the existing law is not qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) (“non-qualifying expenditure”). 30
- (2) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure – 35
- (a) this Schedule has effect as if there were separate assets representing the non-qualifying expenditure and the other expenditure, and
 - (b) if this Schedule does not apply to the former, the enactments that apply where this Schedule does not apply also have effect as if there were a separate asset representing the non-qualifying expenditure. 40
- Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

- (3) An asset to which this paragraph applies is regarded for the purposes of paragraph 118 as created before (and not after) commencement if the asset in question was held at any time before commencement by the company or a related party.

Expenditure on acquisition treated as incurred when recognised for accounting purposes 5

- 123 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) the general rule is that expenditure on the acquisition of an asset is treated as incurred when it is recognised for accounting purposes.

- (2) This is subject to – 10
 paragraph 124 (chargeable gains rules to be followed in certain cases),
 and
 paragraph 125 (capital allowances rule to be followed in certain cases).

When expenditure treated as incurred: chargeable gains rule to be followed in certain cases

- 124 For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the acquisition of the asset that – 15

- (a) does not qualify for any form of tax relief against income under the existing law, and
(b) would be treated as incurred after commencement under the general rule in paragraph 123, 20

shall be treated as incurred before commencement if the asset is (or would be) treated as disposed of (and thus acquired) before commencement for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).

When expenditure treated as incurred: capital allowances general rule to be followed in certain cases 25

- 125 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the creation or acquisition of an asset that under the existing law is qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) is treated as incurred when an unconditional obligation to pay it comes into being. 30

- (2) For this purpose there may be an unconditional obligation to pay although the whole or part of the expenditure is not required to be paid until a later date.

Application of Schedule to fungible assets 35

- 126 (1) The provisions of this paragraph have effect for the purposes of this Part in relation to assets to which paragraph 107 applies (treatment of fungible assets as single asset)

- (2) Paragraph 107 applies as if – 40
 (a) existing assets, and
 (b) intangible fixed assets that are not existing assets,
were assets of different kinds.

- (3) Where paragraph 107 applies (by virtue of sub-paragraph (2) or otherwise) –
- (a) a single asset comprising existing assets is treated as itself being an existing asset, and
 - (b) a single asset comprising intangible fixed assets that are not existing assets is treated as itself being an asset to which this Schedule applies. 5
- (4) The realisation by a company of an intangible fixed asset that apart from sub-paragraph (2) would be regarded as part of a single asset comprising both existing assets and assets that are not existing assets shall be regarded as diminishing the single asset of the company comprising existing assets in priority to diminishing the single asset of the company comprising assets that are not existing assets. 10
- (5) Intangible fixed assets acquired by a company that would not otherwise be regarded as existing assets shall be treated as existing assets to the extent that they are to be identified, in accordance with the following rules, with existing assets realised by the company. 15
- (6) The rules are –
- (a) that assets acquired are to be identified with existing assets of the same kind realised by the company within the period beginning 30 days before and ending 30 days after the date of the acquisition; 20
 - (b) that assets realised earlier are to be identified before assets realised later;
 - (c) that assets acquired earlier are to be identified before assets acquired later. 25
- The reference in paragraph (a) to assets “of the same kind” are to assets that are, or but for sub-paragraph (2) would be, treated by virtue of paragraph 107 as part of a single asset.

Application of Schedule to certain existing telecommunication rights

- 127 (1) This Schedule applies to an existing asset consisting of a licence or other right within Schedule 23 to the Finance Act 2000 (c.17) (certain telecommunication rights). 30
- (2) This Schedule has effect in relation to the asset –
- (a) as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement, and 35
 - (b) as if amounts brought into account for tax purposes in earlier accounting periods under Schedule 23 to the Finance Act 2000 had been so brought into account under this Schedule.
- (3) For the purposes of Part 7 (roll-over relief on realisation and reinvestment) the asset shall be treated as if it had been a chargeable intangible asset from the time of its acquisition or, if later, the beginning of the first accounting period to which this Schedule applies in relation to it. 40
- (4) Schedule 23 to the Finance Act 2000 shall cease to have effect for the purposes of corporation tax as regards accounting periods ending after commencement. 45

Application of Schedule to existing Lloyd's syndicate capacity

- 128 (1) This Schedule applies to an existing asset consisting of the rights of a member of Lloyd's under a syndicate within the meaning of Chapter 5 of Part 4 of the Finance Act 1994 (c. 9) (taxation of corporate members of Lloyd's). 5
- (2) This Schedule has effect in relation to the asset as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement.
- (3) For the purposes of paragraph 9(5) (writing down on accounting basis: calculation of amount of debit for tax purposes) as it applies to the first accounting period to which this Schedule applies in relation to such an asset, the tax written down value of the asset shall be computed under paragraph 27 as if the debits to be deducted under that paragraph included all accounting losses previously recognised in respect of the asset, whether or not they gave rise to a deduction for tax purposes. 10 15
- (4) For the purposes of Part 7 (roll-over relief on realisation and reinvestment) the asset shall be treated as if it had been a chargeable intangible asset from the time of its acquisition or, if later, the beginning of the first accounting period to which this Schedule applies in relation to it.

Roll-over relief: application in relation to disposal of existing asset after commencement 20

- 129 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where a company disposes of an existing asset after commencement.
References in this paragraph to the disposal of an asset have the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12). 25
- (2) Part 7 applies in accordance with this paragraph with the following adaptations—
- (a) for references to the realisation of the old asset substitute references to its disposal;
 - (b) for references to its being a chargeable intangible asset substitute references to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992; 30
 - (c) for references to the proceeds of its realisation substitute references to the net proceeds of disposal under that Act; and
 - (d) for references to its cost recognised for tax purposes substitute references to the cost under that Act. 35
- (3) For the purposes of sub-paragraph (2)(b) an asset is a chargeable asset within the Taxation of Chargeable Gains Act 1992 in relation to a company at any time if, were the asset to be disposed of at that time, any gain accruing to the company on the disposal would be a chargeable gain within the meaning of that Act, and either- 40
- (a) at that time the company is resident or ordinarily resident in the United Kingdom, or
 - (b) the gain would form part of the company's chargeable profits for corporation tax purposes by virtue of section 10(3) of that Act, 45
- unless the company (were it to dispose of the asset at that time) would fall to be regarded for the purposes of any double taxation relief arrangements

as not liable in the United Kingdom to tax on any gain accruing to it on the disposal.

- (4) For the purposes of sub-paragraph (2)(c) the net proceeds of disposal under the Taxation of Chargeable Gains Act 1992 (c. 12) shall be taken to be the amount of value of the consideration for the disposal reduced by any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act. 5
- (5) For the purposes of sub-paragraph (2)(d) the cost under the Taxation of Chargeable Gains Act 1992 shall be taken to be an amount equal to the difference between the net proceeds of disposal as defined in sub-paragraph (4) and the amount of the chargeable gain on the disposal. 10
- (6) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
- (7) Where a company is entitled to relief under Part 7 by virtue of this paragraph, it is treated for the purposes of the Taxation of Chargeable Gains Act 1992 as if the consideration for the disposal of the old asset were reduced by the amount available for relief. 15
- This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets. 20

Roll-over relief: application in relation to degrouping charge on existing asset arising after commencement

- 130 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where – 25
- (a) a company is treated by virtue of subsection (3) or (6) of section 179 of the Taxation of Chargeable Gains Act 1992 (degrouping charge) as having sold and reacquired an existing asset, and
- (b) the time at which by virtue of subsection (4) or (8) of that section the gain is treated as accruing is after commencement. 30
- (2) Part 7 applies in accordance with this paragraph with the adaptations specified in paragraph 129(2) and the following further adaptations (which correspond to those in paragraph 65) –
- (a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset throughout the period during which it was held by the company substitute a reference to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992 throughout the period during which it was held by the company referred to in section 179 of that Act as company B; 35
- (b) in paragraph 39(1) (conditions to be met in relation to expenditure on the other assets), for the references to the date of realisation of the old asset substitute references to – 40
- (i) in a case within subsection (3) of section 179 of that Act, the time at which the gain is treated as accruing under subsection (4) of that section, and 45
- (ii) in a case within subsection (6) of that section, the time at which the gain is treated as accruing under subsection (8) of that section;

- (c) references to the proceeds of realisation shall be read as references to the amount of the consideration for which the company is treated under that Act as having sold and reacquired the asset.
- (3) Paragraph 129(3) (meaning of “chargeable asset”) applies for the purposes of sub-paragraph (2)(a) of this paragraph. 5
- (4) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
- (5) A company entitled to relief under Part 7 by virtue of this paragraph is treated for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) as if the consideration for the disposal of the old asset were reduced by the amount available for relief. 10
- This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets. 15

Roll-over relief: transitory interaction with relief on replacement of business asset

- 131 (1) In relation to the disposal after commencement of an asset that is both –
- (a) an asset of a class specified in section 155 of the Taxation of Chargeable Gains Act 1992 (assets qualifying for roll-over relief on replacement of business asset), and 20
- (b) an intangible fixed asset,
the period specified in section 152(3) of that Act (period within which new assets must be acquired) does not include, and may not be extended so as to include, any period after commencement.
- (2) Subject to that, relief may be claimed in such a case either under Part 7 of this Schedule (roll-over relief on realisation and reinvestment) or under section 152 or 153 of the Taxation of Chargeable Gains Act 1992, or partly under Part 7 and partly under section 152 or 153. 25
- (3) For the purposes of any such claim under section 152 or 153 any expenditure on other assets within the meaning of Part 7 shall be treated as if it were an amount applied as mentioned in section 152(1). 30
- (4) For the purposes of any such claim under Part 7 any amount applied as mentioned in section 152(1) shall be treated as if it were expenditure incurred on other assets.
- (5) Classes 4 to 7 in section 155 of the Taxation of Chargeable Gains Act 1992 (goodwill and various types of quota) shall cease to have effect for the purposes of corporation tax as regards the acquisition of new assets that are chargeable intangible assets. 35
- (6) References in this paragraph to the disposal of an asset have the same meaning as in that Act. 40

PART 15

INTERPRETATION

References to expenditure on an asset

- 132 (1) References in this Schedule to expenditure on an asset are to any expenditure (including abortive expenditure) – 5
- (a) for the purpose of acquiring or creating, or establishing title to, the asset, or
 - (b) by way of royalty in respect of the use of the asset, or
 - (c) for the purpose of maintaining, preserving or enhancing, or defending title to, the asset. 10
- (2) No account shall be taken of capital expenditure on tangible assets in determining for the purposes of this Schedule the amount of expenditure on an intangible asset.
 “Capital expenditure” here has the same meaning as in the Capital Allowances Act 2001 (c. 2). 15
- (3) Any necessary apportionment shall be made on a just and reasonable basis in a case where expenditure is incurred partly as mentioned in subparagraph (1) or (2) and partly otherwise.

References to amounts recognised in profit and loss account

- 133 References in this Schedule to an amount recognised in a company’s profit and loss account for a period include – 20
- (a) an amount recognised in a statement of total recognised gains and losses or other statement of items brought into account in computing the company’s profits and losses for that period; and
 - (b) an amount that would have been so recognised if a profit and loss account or other such statement as is mentioned in paragraph (a) had been drawn up for that period in accordance with generally accepted accounting practice. 25

Meaning of “accounting value”

- 134 References in this Schedule to the “accounting value” of an asset are to the net book value (or carrying amount) of the asset recognised for accounting purposes. 30

Meaning of “adjustments required for tax purposes”

- 135 References in this Schedule to “adjustments required for tax purposes” are to any adjustment required – 35
- (a) by Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), or
 - (b) by any provision of this Schedule.

Meaning of “chargeable intangible asset” and “chargeable realisation gain”

- 136 (1) For the purposes of this Schedule – 40

- (a) an asset is a “chargeable intangible asset” in relation to a company at any time if, were it to be realised by the company at that time, any gain on its realisation would be a chargeable realisation gain;
 - (b) there is a “chargeable realisation gain” if a gain on the realisation of an asset gives rise to a credit required to be brought into account for tax purposes under Part 4 (realisation of intangible fixed asset). 5
- (2) For the purposes of sub-paragraph (1) –
- (a) there is a gain on the realisation of an asset in any case if the circumstances are such that paragraph 20(2)(a), 21(2)(a) or 23(2) applies, and 10
 - (b) there shall be disregarded in determining whether there is such a gain –
 - (i) the availability of relief under Part 7 (roll-over relief on realisation and reinvestment), and
 - (ii) any provision of this Schedule under which a transfer of an asset is to be treated as tax-neutral. 15

Interpretation provisions relating to insurance companies

- 137 (1) In this Schedule “insurance company”, “life assurance business”, “long-term business”, “long-term insurance fund” and “basic life assurance and general annuity business” have the same meaning as in Chapter 1 of Part 12 to the Taxes Act 1988 (see section 431(2) of that Act). 20
- (2) Any question arising in the case of an intangible fixed asset held by an insurance company as to the extent to which –
- (a) the asset is to be treated for the purposes of this Schedule as held for the purposes of any category of business carried on by the company, or 25
 - (b) credits or debits under this Schedule in respect of the asset are to be treated as referable to any such category of business,
- shall be determined in accordance with section 432A of the Taxes Act 1988 as that section would apply (apart from this Schedule) in relation to income or gains from the asset. 30
- (3) Any question arising as to the extent to which royalties payable by an insurance company are referable to any class of business carried on by the company shall be determined in accordance with section 432A of the Taxes Act 1988 as that section would apply if – 35
- (a) the right in respect of the enjoyment or exercise of which the royalties are payable was an asset held by the company, and
 - (b) the royalties payable were income from that asset.

Meaning of “royalty”

- 138 In this Schedule “royalty” means a royalty in respect of the enjoyment or exercise of rights that constitute an intangible fixed asset. 40

Meaning of “tax-neutral transfer”

- 139 (1) This paragraph applies to a transfer of an asset that is, by virtue of any provision of this Schedule, to be treated as a “tax-neutral” transfer.
- (2) Where this paragraph applies – 45

- (a) the transfer is regarded for the purposes of this Schedule as not involving any realisation of the asset by the transferor or any acquisition of that asset by the transferee, and
- (b) the transferee is treated for the purposes of this Schedule as having held the asset at all times when it was held by the transferor and as having done all such things in relation to the asset as were done by the transferor. 5
- (3) This means, in particular –
- (a) that the original cost of the asset in the hands of the transferor is treated as the original cost in the hands of the transferee, and 10
- (b) that all such debits and credits in relation to the asset as have been brought into account for tax purposes by the transferor under this Schedule are treated as if they had been so brought into account by the transferee.
- The reference in paragraph (a) to the cost of the asset is to the cost recognised for tax purposes. 15

Meaning of “the Inland Revenue”

- 140 (1) Functions under these provisions are functions of the Board –
 paragraph 35(2) (group relief: power to allow longer period for claim),
 paragraph 39(1)(a) (roll-over relief: power to allow longer reinvestment period), 20
 paragraphs 84(5), 85(5), 86(9), 87(8) and 88 (transfers treated as tax-neutral, etc: clearance procedure).
- These functions are within section 4A of the Inland Revenue Regulation Act 1890 (c. 21) (functions of Board exercisable by officer acting with their authority). 25
- (2) Subject to sub-paragraph (1), references in this Schedule to “the Inland Revenue” are to any officer of the Board.
- (3) In this paragraph “the Board” means the Commissioners of Inland Revenue.

Meaning of “the Taxes Acts” 30

- 141 In this Schedule “the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

Index of defined expressions

- 142 The expressions listed below are defined or otherwise explained by the provisions indicated: 35
- | | | |
|---|---------------------|----|
| accounting value | paragraph 134 | |
| adjustments required for tax purposes | paragraph 135 | |
| basic life assurance and general annuity business | paragraph 137(1) | 40 |
| chargeable intangible asset | paragraph 136(1)(a) | |

chargeable realisation gain	paragraph 136(1)(b)	
company (in Part 8)	paragraph 46(2)	
effective 51% subsidiary	paragraph 52	
expenditure on an asset	paragraph 132	
goodwill	paragraph 4(2)	5
group (of companies)	paragraph 47 and Part 8 generally	
Inland Revenue	paragraph 140	
insurance company	paragraph 137(1)	
intangible asset	paragraph 2	10
intangible fixed asset	paragraphs 3 and 4(1)	
life assurance business	paragraph 137(1)	
long-term business and long-term insurance fund	paragraph 137(1)	
major interest (in Part 12)	paragraphs 96(2) and (3) and 97 to 99	15
non-trading credits or debits	paragraph 34(1)	
non-trading gain (or loss) on intangible fixed assets	paragraph 34(2) or (3)	20
old asset (in Part 7)	paragraph 37(1)	
other assets (in Part 7)	paragraph 37(1)	
part realisation (of asset)	paragraph 19(3)	
principal company (of group)	paragraph 47(1) and Part 8 generally	25
proceeds of realisation	paragraph 24	
profit and loss account (amounts recognised in)	paragraph 133	
realisation (of asset)	paragraph 19	
related party	paragraph 95 to 101	30
royalty	paragraph 138	
subsidiary (in relation to company formed outside UK)	paragraph 46(3)	
the Taxes Acts	paragraph 141	35

tax-neutral transfer	paragraph 139
tax written down value	Part 5

SCHEDULE 30

Section 83(2)

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS: CONSEQUENTIAL AMENDMENTS 5

General provisions about deductions

- 1 (1) For sections 337 and 337A of the Taxes Act 1988 (corporation tax: general provisions about taxation of income) substitute –

“337 Company beginning or ceasing to carry on trade

- (1) Where a company begins or ceases – 10
- (a) to carry on a trade, or
 - (b) to be within the charge to corporation tax in respect of a trade, the company’s income shall be computed as if that were the commencement or, as the case may be, the discontinuance of the trade, whether or not the trade is in fact commenced or discontinued. 15
- (2) Subsection (1) applies to a Schedule A business or overseas property business as it applies to a trade.

337A Computation of company’s profits or income: exclusion of general deductions

- (1) For the purposes of corporation tax, subject to any provision of the Corporation Tax Acts expressly authorising a deduction – 20
- (a) a company’s profits shall be computed without any deduction in respect of dividends or other distributions, and
 - (b) a company’s income from any source shall be computed without any deduction in respect of charges on income. 25
- (2) In computing a company’s income from any source for the purposes of corporation tax –
- (a) no deduction shall be made in respect of interest except in accordance with Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships); and 30
 - (b) no deduction shall be made in respect of losses from intangible fixed assets within Schedule 29 to the Finance Act 2002 except in accordance with that Schedule.”.
- (2) For section 338 of the Taxes Act 1988 (corporation tax: charges on income) substitute – 35

“338 Charges on income deducted from total profits

- (1) Charges on income are allowed as deductions from a company’s total profits in computing the corporation tax chargeable for an accounting period.

- (2) They are deducted from the company's total profits for the period as reduced by any other relief from tax other than group relief.
 - (3) The amount of the deduction is limited to the amount that reduces the company's total profits for the period to nil.
 - (4) Except as otherwise provided, a deduction is allowed only in respect of payments made by the company in the accounting period concerned. 5
 - (5) The above provisions are subject to any express exceptions in the Corporation Tax Acts.
- 338A Meaning of “charges on income” 10**
- (1) This section defines what payments or other amounts are “charges on income” for the purposes of corporation tax.
This section has effect subject to any express exceptions in the Corporation Tax Acts.
 - (2) Subject to the following provisions of this section, the following (and only the following) are charges on income – 15
 - (a) annuities or other annual payments that meet the conditions specified in section 338B;
 - (b) qualifying donations within the meaning of section 339 (qualifying donations to charity); 20
 - (c) amounts allowed as charges on income under section 587B(2)(a)(ii) (gifts of shares etc to charity).
 - (3) No payment that is deductible in computing profits or any description of profits for the purposes of corporation tax shall be treated as a charge on income. 25
 - (4) No payment shall be treated as a charge on income if (without being so deductible) it is –
 - (a) an annuity payable by an insurance company, or
 - (b) an annuity or other annual payment payable by a company wholly or partly in satisfaction of any claim under an insurance policy in relation to which the company is the insurer. 30

In paragraph (a) “insurance company” has the same meaning as in Chapter 1 of Part 12.
- 338B Charges on income: annuities or other annual payments 35**
- (1) An annuity or other annual payment is a charge on income if –
 - (a) the requirements specified in subsection (2) are met, and
 - (b) it is not excluded from being a charge on income for the purposes of corporation tax –
 - (i) by any of the following provisions of this section, or 40
 - (ii) by any other provision of the Corporation Tax Acts.
 - (2) The requirements are that the payment –
 - (a) is made under a liability incurred for a valuable and sufficient consideration,
 - (b) is not charged to capital, 45

- (c) is ultimately borne by the company, and
- (d) in the case of a company not resident in the United Kingdom, is incurred wholly and exclusively for the purposes of a trade which is or is to be carried on by it in the United Kingdom through a branch or agency. 5
- (3) An annuity or other annual payment made to a person not resident in the United Kingdom shall be treated as a charge on income only if the following conditions are met.
- (4) The conditions are that the company making the payment is resident in the United Kingdom and that either – 10
- (a) the company deducts tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
- (b) the person beneficially entitled to the income in respect of which the payment is made is a company that is not resident in the United Kingdom but which carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2) of that company, or 15 20
- (c) the payment is one payable out of income brought into charge to tax under Case V of Schedule D.
- (5) An annuity or other annual payment is not a charge on income if –
- (a) it is payable in respect of the company's loan relationships, or
- (b) it is a royalty to which Schedule 29 to the Finance Act 2002 applies (royalties in respect of intangible fixed assets). 25
- (6) Nothing in this section prevents an annuity or other annual payment from being a charge on income if it is a qualifying donation (within the meaning of section 339).”.
- (3) In section 214 of the Taxes Act 1988 (chargeable payments connected with exempt distributions), in paragraph (c) (payments not to be treated as distributions for purposes of certain provisions) for “sections 337(2) and 338(2)(a)” substitute “section 337A(1)”. 30
- (4) In section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), in the definition of “charges on income” for “338” substitute “338A”. 35
- (5) In Schedule 23A to the Taxes Act 1988 (manufactured dividends), in paragraph 4(2)(b) for “338(4)(a)” substitute “338B(4)(a)”.

Surrender of non-trading loss by way of group relief

- 2 (1) In section 403 of the Taxes Act 1988 (amounts that may be surrendered by way of group relief) – 40
- (a) in subsection (1)(b) (amounts that may be surrendered if available for group relief) for “or management expenses which are” substitute “, management expenses or a non-trading loss on intangible fixed assets”;
- (b) in subsection (3), in the first sentence (meaning of availability for group relief), for “and management expenses” substitute 45

- “management expenses and a non-trading loss on intangible fixed assets”;
- (c) in subsection (3), in the second sentence (order in which amounts treated as used), for “and finally management expenses” substitute “, management expenses and finally a non-trading loss on intangible fixed assets”. 5
- (2) In section 403ZD of the Taxes Act 1988 (further provisions as to amounts available for group relief), after subsection (5) insert –
- “(6) A non-trading loss on intangible fixed assets means a non-trading loss on intangible fixed assets, within the meaning of Schedule 29 to the Finance Act 2002, for the surrender period. 10
It does not include so much of any such loss as is attributable to an amount being carried forward under paragraph 35(3) of that Schedule (amounts carried forward from earlier periods).”.
- Extension of charitable exemption to non-trading gains* 15
- 3 In section 505(1) of the Taxes Act 1988 (charities: exemptions), in paragraph (c) (income charged under Schedule D) after sub-paragraph (iib) insert –
- “(iic) from tax under Case VI of Schedule D in respect of non-trading gains on intangible fixed assets under Schedule 29 to the Finance Act 2002, and”. 20
- Change in ownership of company with unused non-trading loss*
- 4 (1) Chapter 6 of Part 17 of the Taxes Act 1988 (tax avoidance: miscellaneous) is amended as follows.
- (2) In section 768C, after subsection (12) add –
- “(13) This section applies in relation to an asset to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets), with the following adaptations – 25
- (a) for the reference to section 171(1) of the 1992 Act substitute a reference to paragraph 55 of that Schedule;
- (b) for any reference to a chargeable gain under that Act substitute a reference to a chargeable realisation gain within the meaning of that Schedule that is a credit within paragraph 34(1)(a) of that Schedule (non-trading credits); 30
- (c) for any reference to a disposal of the asset substitute a reference to its realisation within the meaning of that Schedule; 35
- (d) for the reference to the relevant provisions of the 1992 Act substitute a reference to Part 6 of that Schedule.”.
- (3) After section 768D insert –
- “768E Change in ownership of company with unused non-trading loss on intangible fixed assets** 40
- (1) Where there is a change in the ownership of an investment company and either –
- (a) paragraph (a), (b) or (c) of section 768B(1) applies, or
- (b) section 768C applies, 45

- the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change. 5
- (2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.
- (3) The profits or losses of the period in which the change occurs are apportioned to those two periods – 10
- (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
- (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule, 15
- unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.
- (4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately. 20
- (5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against – 25
- (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
- (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section. 30
- (6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.
- (7) In this section “investment company” has the same meaning as in Part 4.”. 35
- (4) In paragraph 6 of Schedule 28A to the Taxes Act 1988 (amounts in issue for purposes of section 768B), after paragraph (dd) insert –
- “(de) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002; 40
- (df) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;”.
- (5) In paragraph 7 of that Schedule (apportionment for purposes of section 768B), after paragraph (f) insert – 45
- “(g) in the case of any such credit or debit as is mentioned in paragraph 6(de), by apportioning to each accounting

- period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;
- (h) in the case of any such loss as is mentioned in paragraph 6(df) above, by apportioning the whole amount of the loss to the first part of the accounting period being divided.” 5
- (6) In paragraph 13 of that Schedule (amounts in issue for purposes of section 768C), after paragraph (ed) insert—
- “(ee) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002; 10
- (ef) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;” 15
- (7) In paragraph 16 of that Schedule (apportionment for purposes of section 768C), after paragraph (f) insert—
- “(g) in the case of any such credit or debit as is mentioned in paragraph 13(ee), by apportioning to each accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice; 20
- (h) in the case of any such loss as is mentioned in paragraph 13(ef), by apportioning the whole amount of the loss to the first part of the accounting period being divided” 25

Double taxation relief

- 5 (1) Part 18 of the Taxes Act 1988 (double taxation relief) is amended as follows.
- (2) In section 795 (computation of income subject to foreign tax), in subsection (4) (application of that section notwithstanding certain other provisions) after “notwithstanding anything in” insert “– (a)” and at the end insert – 30
- “, or
- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).” 35
- (3) In the heading to section 797A (foreign tax on items giving rise to a non-trading credit), at the end add “: loan relationships”.
- (4) After that section insert –
- “797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets 40**
- (1) This section applies for the purposes of any arrangements where, in the case of a company –
- (a) a non-trading credit relating to an item is brought into account for the purposes of Schedule 29 to the Finance Act 2002 (intangible fixed assets) for an accounting period (“the applicable accounting period”), and 45

- (b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.
- (2) It shall be assumed that tax chargeable under Case VI of Schedule D on the profits and gains arising for the applicable accounting period from the company's intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits. 5
- (3) Section 797(3) shall have effect as if—
- (a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and 10
- (b) different parts of that amount might be set against different profits. 15
- (4) For this purpose the adjusted amount of a company's non-trading debits for an accounting period is given by:
- Total Debits – Amount Carried Forward
- where—
- Total Debits is the aggregate amount of the company's non-trading debits for that accounting period under Schedule 29 to the Finance Act 2002 (intangible fixed assets), and 20
- Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under paragraph 35(3) of that Schedule (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period). 25
- (5) In section 811 (deduction for foreign tax where no credit available), in subsection (3) (application of that section notwithstanding certain other provisions) after “notwithstanding anything in” insert “– (a)” and at the end insert— 30
- “, or
- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).”.

Value-shifting provisions 35

- 6 (1) After section 33 of the Taxation of Chargeable Gains Act 1992 (provisions supplementary to sections 30 to 32) insert—

“33A Modification of sections 30 to 33 in relation to chargeable intangible asset

- (1) Sections 30 to 33 have effect in relation to a chargeable intangible asset subject to the following modifications. 40
- In this section “chargeable intangible asset” has the same meaning as in Schedule 29 to the Finance Act 2002.
- (2) Any reference in those sections—

- (a) to a disposal or part disposal of the asset shall be read as a reference to its realisation or part realisation within the meaning of that Schedule (see paragraph 19 of that Schedule);
 - (b) to an disposal of the asset under section 171(1) shall be read as a reference to its transfer under paragraph 55 of that Schedule (transfers within a group); 5
 - (c) to a disposal of the asset under section 179 shall be read as a reference to its realisation under paragraph 58 or 60 of that Schedule (degrouching).
- (3) In section 31(6), paragraph (c) shall not apply to a revaluation where the profit on the revaluation is wholly taken into account as a credit under that Schedule (see paragraph 15 of that Schedule). 10
 - (4) None of the conditions in section 31(9) shall be treated as satisfied if the asset with enhanced value is a chargeable intangible asset within the meaning of that Schedule. 15
 - (5) The reference in section 32(2)(b) to the cost of the underlying asset shall be read, in the case of a chargeable intangible asset, as a reference to the capitalised value of the asset recognised for accounting purposes.

SCHEDULE 31

Section 84

20

GAINS OF INSURANCE COMPANY FROM VENTURE CAPITAL INVESTMENT PARTNERSHIP

The following Schedule is inserted after Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (c. 12) –

“SCHEDULE 7AD

GAINS OF INSURANCE COMPANY FROM VENTURE CAPITAL INVESTMENT PARTNERSHIP

25

Introduction

- 1 This Schedule applies where the assets of the long-term insurance fund of an insurance company (“the company”) include assets held by the company as a limited partner in a venture capital investment partnership (“the partnership”). 30

Meaning of “venture capital investment partnership”

- 2 (1) A “venture capital investment partnership” means a partnership that does not carry on a trade and whose investments consist, and have at all times consisted, exclusively of shares or securities that – 35
 - (a) are unquoted at the time of their acquisition by the partnership, and
 - (b) if they subsequently become quoted, remain unquoted for at least twelve months after their acquisition by the partnership. 40

- (2) For this purpose there shall be disregarded –
- (a) any holding of cash (including cash deposited in a bank account or similar account, but not cash acquired wholly or partly for the purpose of realising a gain on its disposal); and 5
 - (b) quoted securities (but not shares) whose total market value does not exceed 5% of the book value of the partnership’s investments.
- (3) For the purposes of sub-paragraph (2)(b) the book value of the partnership’s investments at any time shall be taken to be the value shown in the partnership’s accounts at the end of the period of account including that time. 10
- (4) A single failure by a partnership to comply with sub-paragraph (1)(b) shall be disregarded if at the time the partnership acquired the shares or securities in question it was reasonable to believe that they would not become quoted within the next twelve months. 15
- (5) Where a partnership ceases to be a venture capital investment partnership this Schedule shall be deemed never to have applied to it.
- Interest in relevant assets of partnership treated as single asset* 20
- 3 (1) Where this Schedule applies section 59 (partnerships) does not have effect to make the company chargeable on its share of gains accruing on each disposal of relevant assets of the partnership.
- (2) Instead –
- (a) the company’s interest in relevant assets of the partnership is treated as a single asset (“the single asset”) acquired by the company when it became a member of the partnership, and 25
 - (b) the following provisions of this Schedule have effect.
- (3) For the purposes of this Schedule the “relevant assets” of the partnership are the shares and securities held by the partnership, other than qualifying corporate bonds. 30
- (4) Nothing in this Schedule shall be read –
- (a) as affecting the operation of section 59 in relation to partners who are not insurance companies carrying on long-term business or are not limited partners, or 35
 - (b) as imposing any liability on the partnership as such.
- The cost of the single asset*
- 4 (1) The company is treated as having given, wholly and exclusively for the acquisition of the single asset, consideration equal to the amount of capital contributed by it on becoming a member of the partnership. 40
- (2) Any further amounts of capital contributed by it to the partnership are treated on a disposal of the single asset as expenditure incurred wholly and exclusively on the asset for the purpose of 45

enhancing its value and reflected in its state or nature at the time of the disposal.

- (3) In sub-paragraphs (1) and (2) the references to amounts of capital contributed include amounts purporting to be provided by way of loan if – 5
- (a) the loan carries no interest,
 - (b) all the limited partners are required to make such loans, and
 - (c) the loans are accounted for as partners' capital in the accounts of the partnership. 10
- (4) Where the investments of the partnership include qualifying corporate bonds, the amount to be taken into account under sub-paragraph (1) or (2) is proportionately reduced.
- (5) The reduction is made by applying to that amount the fraction:

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

where – 15

A is the book value of all shares and securities held by the partnership at the end of the period of account of the partnership in which the amount of capital in question is fully invested by the partnership, and

B is the book value of all qualifying corporate bonds held by the partnership at the end of that period of account, 20

- (6) For the purposes of sub-paragraph (5) the “book value” means the value shown in the partnership’s accounts at the end of the period of account.

Deemed disposal of single asset in case of distribution 25

- 5 (1) There is a disposal of the single asset on each occasion on which the company receives a distribution from the partnership that does not consist entirely of income or the proceeds of sale or redemption of assets that are not relevant assets.

- (2) The disposal is taken to be for a consideration equal to the amount of the distribution or of so much of it as does not consist of income or the proceeds of sale or redemption of assets that are not relevant assets. 30

- (3) Where –

- (a) the partnership disposes of relevant assets on which a chargeable gain or allowable loss would accrue if they were held by the company alone, and 35

- (b) no distribution of the proceeds of the disposal is made within twelve months of the disposal,

the company is treated as having received its share of the proceeds as a distribution at the end of the period of account of the partnership following that in which the disposal took place, or at the end of the period of six months after the date of the disposal, whichever is the later. 40

- (4) Where sub-paragraph (3) applies, any subsequent actual distribution of the proceeds is disregarded.

Apportionment in case of part disposal

- 6 (1) For the purposes of section 42 (apportionment of cost etc in case of part disposal) the market value of the property remaining undisposed of on a part disposal of the single asset shall be determined as follows. 5
- (2) If there is no further disposal of that asset in the period of account in which the part disposal in question takes place, the market value of the property remaining undisposed of shall be taken to be equal to the company's share of the book value of the relevant assets of the partnership as shown in the partnership's accounts at the end of that period of account. 10
- (3) If there is a further disposal of that asset in the period of account in which the part disposal in question takes place, or more than one, the market value of the property remaining undisposed of shall be taken to be equal to the sum of— 15
- (a) the amount or value of the consideration on the further disposal or, as the case may be, the total amount or value of the consideration on the further disposals, and 20
- (b) the amount (if any) of the company's share of the book value of the relevant assets of the partnership as shown in the partnership's accounts at the end of that period of account.

Disposal of partnership asset giving rise to offshore income gain 25

- 7 (1) Nothing in this Schedule shall be read as affecting the operation of Chapter 5 of Part 17 of the Taxes Act (offshore funds).
- (2) Where an offshore income gain accrues to the company under that Chapter from the disposal of any relevant asset of the partnership, the amount of any distribution received or treated as received by the company from the partnership that represents the whole or part of the proceeds of disposal of that asset is treated for the purposes of this Schedule as reduced by the amount of the whole or a corresponding part of the offshore income gain. 30

Exclusion of negligible value claim 35

- 8 No claim may be made in respect of the single asset under section 24(2) (assets that have become of negligible value).

Intepretation

- 9 (1) In this Schedule— 40
- “insurance company”, “long-term business” and “long-term insurance fund” have the same meaning as in Chapter 1 of Part 12 of the Taxes Act (see section 431(2) of that Act);
- “limited partner” means—

- (a) a person carrying on a business as a limited partner in a partnership registered under the Limited Partnership Act 1907, or
 - (b) a person carrying on a business jointly with others who, under the law of a country or territory outside the United Kingdom, is not entitled to take part in the management of the business and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the business;
- “relevant assets” has the meaning given by paragraph 3(3);
“securities” has the same meaning as in section 132;
“unquoted” and “quoted”, in relation to shares or securities, refer to listing on a recognised stock exchange.
- (2) References in this Schedule to the partnership’s accounts are to accounts drawn up in accordance with generally accepted accounting practice.
- If no such accounts are drawn up, the references to the treatment of any matter, or the amounts shown, in the accounts of the partnership are to what would have appeared if accounts had been drawn up in accordance with generally accepted accounting practice.

General commencement and transitional provisions

- 10 (1) Subject to paragraph 11 (election to remain outside Schedule), this Schedule applies –
- (a) to periods of account of the partnership beginning on or after 1st January 2002, and
 - (b) to a period of account of the partnership beginning before that date and ending on or after it, unless the company elects that it shall not do so.
- (2) Where the company became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule applies, the cost of the single asset at the beginning of that period of account shall be taken to be equal to the total of the relevant indexed base costs.
- (3) For the purposes of sub-paragraph (2) –
- (a) the “indexed base cost” means –
 - (i) in relation to a holding that by virtue of section 104 is to be treated as a single asset, what would be the indexed pool of expenditure within the meaning of section 110 if the holding were disposed of, and
 - (ii) in relation to any other asset, the amount of expenditure together with the indexation allowance that would be fall to be deducted if the asset were disposed of; and
 - (b) the “relevant indexed base costs” means the indexed base costs that would be taken into account in computing in accordance with section 59 the gain or loss of the company if all the shares and securities (other than qualifying

corporate bonds) held by the partnership were disposed of on the last day of the company's accounting period immediately preceding its first accounting period beginning on or after 1st January 2002.

- (4) No account shall be taken under this Schedule of a distribution by the partnership in a period of account to which this Schedule applies to the extent that it represents a chargeable gain accruing in an earlier period to which this Schedule does not apply.” 5

Election to remain outside Schedule

- 11 (1) If the company – 10
- (a) became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule would otherwise apply, or
 - (b) made its first contribution of capital to the partnership before 17th April 2002, 15
- it may elect that the provisions of this Schedule shall not apply to it in relation to that partnership.
- (2) In sub-paragraph (1)(b) the reference to a contribution of capital includes an amount purporting to be provided by way of loan if – 20
- (a) the loan carries no interest,
 - (b) all the limited partners are required to make such loans, and
 - (c) the loans are accounted for as partners' capital in the accounts of the partnership.

How and when election to be made 25

- 12 Any election under paragraph 10 or 11 must be made –
- (a) by notice to an officer of the Board,
 - (b) not later than the end of the period of two years after the end of the company's first accounting period beginning on or after 1st January 2002.” 30

SCHEDULE 32

Section 85

LLOYD'S UNDERWRITERS

Individuals

- 1 Chapter 3 of Part 2 of the Finance Act 1993 (c. 34) (Lloyd's underwriters, etc) is amended as follows. 35
- 2 In section 178 (stop loss and quota share insurance), in subsection (1) (deductions), for paragraph (c) substitute –
- “(c) where an amount is payable by him under a quota share contract –
 - (i) so much of that amount as exceeds the amount of transferred losses that are declared on or before the 40

- date the contract takes effect (“the declared amount”),
or
- (ii) if the contract does not take effect, the amount so payable under the contract.”
- 3 After subsection (3) of that section insert— 5
- “(3A) Where the amount payable by a member under a quota share contract is less than the declared amount, the difference between the two amounts shall be treated as a trading receipt in computing the profits arising from the member’s underwriting business in the year of assessment which corresponds to the underwriting year in which the contract takes effect. 10
- (3B) Where a member has entered a quota share contract, any amount paid by him to cover a cash call in respect of transferred losses that are not declared at the time the contract takes effect shall be treated as an amount payable under the contract for the purposes of subsections (1)(c)(i) and (3A) above.” 15
- 4 For subsection (4) of that section substitute—
- “(4) For the purposes of this section—
- “cash call” has the same meaning as in Part 1 of Schedule 20 to this Act; 20
- “quota share contract” means any contract between a member and another person which—
- (a) is made in accordance with the rules or practice of Lloyd’s, and
- (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which he is a member; 25
- and where the taking over of a member’s rights and liabilities is conditional upon the occurrence of any event, the contract does not take effect until that event occurs; and 30
- “transferred loss”, in relation to such a contract, means a loss for which that other person takes over liability under the contract (disregarding, in the case of a loss that has been declared at the time it is taken over, any part of it in respect of which the member has paid a cash call before that time).” 35
- 5 In section 184(1) (interpretation), in the definition of “stop-loss insurance”, after “business” insert “, except insurance taken out by entering a quota share contract (within the meaning of section 178 above)”.

Corporate bodies

- 6 Chapter 5 of Part 4 of the Finance Act 1994 (c. 9) (Lloyd’s underwriters: corporations etc) is amended as follows. 40
- 7 In section 225 (stop loss and quota share insurance), in subsection (1) (deductions), for paragraph (b) substitute—
- “(b) where an amount is payable by it under a quota share contract— 45

- (i) so much of that amount as exceeds the amount of transferred losses that are declared on or before the date the contract takes effect (“the declared amount”), or
- (ii) if the contract does not take effect, the amount so payable under the contract.” 5
- 8 After subsection (3) of that section insert –
- “(3A) Where the amount payable by a corporate member under a quota share contract is less than the declared amount –
- (a) if the underwriting year in which the contract takes effect falls within a single accounting period, the difference between the two amounts (“the surplus”) shall be treated as a trading receipt in computing the profits arising from the member’s underwriting business for that period, and 10
- (b) if that underwriting year falls within two or more accounting periods, the apportioned part of the surplus shall be treated as a trading receipt in computing the profits arising from the member’s underwriting business for each of those periods. 15
- (3B) Where a corporate member has entered a quota share contract, any amount paid by it to cover a cash call in respect of transferred losses that are not declared at the time the contract takes effect shall be treated as an amount payable under the contract for the purposes of subsections (1)(b)(i) and (3A) above.” 20
- 9 For subsection (4) of that section substitute –
- “(4) In this section – 25
- “apportioned part”, in relation to any insurance money or other amount, means a part apportioned under section 72 of the Taxes Act 1988;
- “cash call” means a request for funds which, in pursuance of a contract made in accordance with the rules and practices of Lloyd’s, is made to a corporate member by the agent of a syndicate of which it is a member; 30
- “quota share contract” means any contract between a corporate member and another person which –
- (a) is made in accordance with the rules or practice of Lloyd’s; and 35
- (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which it is a member;
- and where the taking over of a member’s rights and liabilities is conditional upon the occurrence of any event, the contract does not take effect until that event occurs; and 40
- “transferred loss”, in relation to such a contract, means a loss for which that other person takes over liability under the contract (disregarding, in the case of a loss that has been declared at the time it is taken over, any part of it in respect of which the member has paid a cash call before that time).” 45

- 10 In section 230(1) (interpretation), in the definition of “stop-loss insurance”, after “business” insert “, except insurance taken out by entering a quota share contract (within the meaning of section 225 above)”.

SCHEDULE 33

Section 107

VENTURE CAPITAL TRUSTS

5

PART 1

VENTURE CAPITAL TRUSTS: WINDING UP

Meaning of “VCT-in-liquidation”

- 1 (1) In this Part of this Schedule “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), 10
 - (b) that was a venture capital trust immediately before the commencement of its winding-up, and
 - (c) whose winding up is for *bona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax. 15
- (2) Regulations may, for purposes of this Part of this Schedule, 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. 20

Power to treat VCT-in-liquidation as VCT

- 2 (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 venture capital trust were, or were during any prescribed period of its winding-up, a venture capital trust; 25
 - (b) VCT approval withdrawn from a company –
 - (i) at any time during the period when it is a VCT-in-liquidation, or 30
 - (ii) at any time during a prescribed part of that period, were withdrawn at a prescribed time (and not at the time at which it is actually withdrawn).
- (2) In this paragraph “prescribed” means specified by, or determined under, regulations. 35

Power to treat conditions for VCT approval as fulfilled with respect to VCT-in-liquidation

- 3 (1) Regulations may make provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to a VCT-in-liquidation. 40

- (2) Provision under sub-paragraph (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 as from a time specified by or determined under the regulations, from a VCT-in-liquidation from whom the Board would have power to withdraw such approval but for provision made under sub-paragraph (1).

Power to make provision about distributions by VCT-in-liquidation

- 4 (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 sub-paragraph (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
 - (b) during periods of its winding-up specified by, or determined under, regulations.

Power to facilitate disposals to VCT by VCT-in-liquidation

- 5 (1) Regulations may make provision authorised by sub-paragraph (2) for cases where shares in or securities of a company are acquired by a venture capital trust (“the trust company”) from a VCT-in-liquidation.
- (2) The provision that may be made under sub-paragraph (1) for such a case is –
- (a) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the trust company 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 trust company, as meeting requirements of Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings);
 - (c) provision for shares in the trust company 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 purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12), as representing shares in the VCT-in-liquidation held by that person.
- (3) Provision under sub-paragraph (1) may be made so as to apply in relation to shares or securities acquired from a VCT-in-liquidation – 5
- (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 paragraph “securities” means any securities and includes any liability that is a security in relation to a company by reason of section 842AA(12)(a) of the Taxes Act 1988. 10

Provision in respect of periods before and after winding-up

- 6 (1) Any power under paragraphs 2 to 5 to make provision in relation to a VCT-in-liquidation includes power to make corresponding or similar provision in relation to – 15
- (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 application was made, the court had ordered the company’s winding-up to commence at that time;
 - (b) a company that has been a VCT-in-liquidation but is no longer a VCT-in-liquidation because it has been wound up. 20
- (2) For the purposes of making provision in reliance on sub-paragraph (1), references in paragraphs 2 to 5 (however expressed) to a VCT-in-liquidation’s winding-up, or to 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 sub-paragraph (1) applies. 25
- (3) In this paragraph –
- “the extension period” –
 - (a) in relation to a company to which sub-paragraph (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 30
 - (b) in relation to company to which sub-paragraph (1)(b) applies, means the period between the end of the company’s winding-up and the company’s dissolution; 35
- “prescribed” means specified by, or determined under, regulations.

Part 1: supplementary provisions and interpretation

- 7 (1) Provision made by regulations under paragraphs 2 to 6 applies in cases, and subject to conditions, specified by regulations. 40
- (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) Such provision may be made in relation to any – 45
- (a) VCT-in-liquidation, or
 - (b) company such as is mentioned in paragraph 6(1),

whose winding-up commences on or after 17th April 2002.

- (4) In this Part of this Schedule “VCT approval” means approval for the purposes of section 842AA of the Taxes Act 1988 (approval as a VCT).
- (5) References in this Part of this Schedule to things done by a VCT-in-liquidation include things done by a liquidator of a VCT-in-liquidation. 5

PART 2

VENTURE CAPITAL TRUSTS: MERGERS

Power to facilitate mergers of VCTs

- 8 (1) The Treasury may by regulations make provision authorised by paragraph 9 for cases where – 10
- (a) there is a merger of two or more companies each of which is a venture capital trust immediately before the merger begins to be effected, and
- (b) the merger is for *bona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax. 15
- (2) Provision made by regulations under sub-paragraph (1) applies –
- (a) in cases, and
- (b) subject to conditions (including conditions requiring approvals to be obtained), 20
- specified by the regulations.
- (3) Provision made by regulations under sub-paragraph (1) may apply in relation to any merger where the transactions for effecting the merger take place on or after 17th April 2002.

Provision that may be made by regulations under paragraph 8(1) 25

- 9 (1) The provision that may be made under paragraph 8(1) for a case where there is a merger of two or more companies (“the merging companies”) is –
- (a) 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 venture capital trust for purposes of tax enactments specified by regulations; 30
- (b) provision for paragraph 3 of Schedule 15B to the Taxes Act 1988 (loss of relief on disposal of VCT shares within three 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; 35
- (c) provision for such disposals not to be chargeable events for the purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12) (VCTs: deferred charge on re-investment);
- (d) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated (whether at times before, during or after the merger) for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the successor company or any of the merging companies; 40

- (e) 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 Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings); 5
 - (f) 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; 10
 - (g) provision authorising disclosure for tax purposes connected with the merger –
 - (i) by the Board or officers of the Board,
 - (ii) to any of the merging companies or the successor company, 15
 - (iii) of any information provided to the Board, or any officer of the Board, by or on behalf of any of the merging companies or the successor company.
- (2) In this paragraph “securities” has the same meaning as in section 842AA of the Taxes Act 1988. 20

Meaning of “merger” and “successor company”

- 10 (1) For the purposes of this Part of this Schedule 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 25
 - (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. 30
- (2) For the purposes of this Part of this Schedule 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 35
 - (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. 40
- (3) In this Part of this Schedule “the successor company” –
- (a) in relation to a merger such as is described in sub-paragraph (1), means the company that fulfils the role of company A, and
 - (b) in relation to a merger such as is described in sub-paragraph (2), means the company that fulfils the role of company B. 45

PART 3

TIME ALLOWED FOR VCT TO INVEST MONEY RAISED BY FURTHER SHARE ISSUE

Power to disapply, or limit operation of, section 842AA(5B) of the Taxes Act 1988

- 11 (1) Regulations may make provision for section 842AA(5B) of the Taxes Act 1988 (use of money raised by VCT's further issue of shares disregarded during grace period) – 5
- (a) not to apply, or to be treated as not having applied, in specified cases;
- (b) to apply, or to be treated as having applied, in specified cases –
- (i) only to a specified extent;
- (ii) only if specified conditions (including conditions requiring approvals to be obtained) are satisfied. 10
- (2) Provision made by regulations under sub-paragraph (1) may (but need not) be made so that, in any particular case, section 842AA(5B) of the Taxes Act 1988 –
- (a) does not apply, or is treated as not having applied, at prescribed times or with effect as from a prescribed time, or 15
- (b) applies, or is treated as having applied, in accordance with provision made under sub-paragraph (1)(b) at prescribed times or with effect as from a prescribed time.
- (3) Regulations under sub-paragraph (1) may make provision in relation to shares issued on or after 17th April 2002. 20
- (4) In sub-paragraph (1) “specified” means specified by regulations and in sub-paragraph (2) “prescribed” means specified by, or determined under, regulations. 20

Withdrawal of VCT approval in cases for which provision made under paragraph 11 25

- 12 (1) Regulations may make provision for withdrawal of approval of a company for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) 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, fulfilled but for provision made under paragraph 11, and 30
- (b) for purposes of enactments specified by regulations, as having taken effect as from a time specified in the notice of the withdrawal that is earlier than the time when the notice is given to the company. 35
- (2) Provision made under sub-paragraph (1) has effect subject to the provisions of section 842AA(9) of the Taxes Act 1988 (retrospective effect of notices of withdrawal of VCT approval) as to the earliest time that may be specified by such a notice.

Consequential amendment in section 842AA(5A) of the Taxes Act 1988 40

- 13 In section 842AA(5A) of the Taxes Act 1988 (subsection (5B) applies where VCT makes further issue of shares), after “Subsection (5B) below applies” insert “, subject to any regulations under paragraph 11 of Schedule 33 to the Finance Act 2002,”.

PART 4

SUPPLEMENTARY

Extension of existing powers to give effect to VCT reliefs

- 14 (1) Section 73 of the Finance Act 1995 (c. 4) (power to make regulations giving effect to VCT reliefs) shall have effect as if the reliefs mentioned in subsection (1) of that section included any relief arising by reason of regulations under Part 1 or 2 of this Schedule. 5
- (2) The powers conferred by those Parts of this Schedule are additional to those that (whether or not by reason of sub-paragraph (1)) are conferred by that section. 10

Penalties for non-compliance with regulations under this Schedule

- 15 In each column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failure to furnish information etc), after the final entry insert “Regulations under Schedule 33 to the Finance Act 2002.”.

Regulations under this Schedule: inclusion of supplementary etc provisions 15

- 16 (1) Regulations under this Schedule may –
- (a) contain such administrative provisions (including provision for advance clearances and provision for the withdrawal of clearances) as appear to the Treasury to be necessary or expedient;
 - (b) authorise the Board to give notice to any person requiring him 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 Schedule are met; 20
 - (c) make different provision for different cases;
 - (d) include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate; 25
 - (e) include provision having retrospective effect.
- (2) Without prejudice to any specific provisions in this Schedule, a power conferred by any provision of this Schedule to make regulations includes power to provide for the Board, or an officer of the Board, to exercise a discretion in dealing with any matter. 30

Interpretation of Schedule

- 17 In this Schedule –
- “company” includes any body corporate or unincorporated association but does not include a partnership, and shall be construed in accordance with section 99 of the Taxation of Chargeable Gains Act 1992 (c. 12) (application of Act to unit trust schemes); 35
 - “regulations” means regulations made by the Treasury;
 - “shares” includes stock;
 - “tax enactments” means provisions of or made under – 40
 - (a) the Tax Acts,

- (b) the Taxation of Chargeable Gains Act 1992 (c. 12) or any other enactment relating to capital gains tax, or
- (c) the Taxes Management Act 1970 (c. 9);
- “venture capital trust” has the meaning given by section 842AA of the Taxes Act 1988.

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SCHEDULE 34

Section 109

STAMP DUTY: WITHDRAWAL OF GROUP RELIEF: SUPPLEMENTARY PROVISIONS

Introduction

- 1 (1) The provisions of this Schedule supplement section 109 (withdrawal of group relief). 10
- (2) Expressions used in this Schedule that are defined for the purposes of that section have the same meaning in this Schedule.

Relief not withdrawn if transferor company leaves group

- 2 (1) Section 109 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of the latter company leaving the group. 15
- (2) The transferor company is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in –
- (a) the transferor company, or 20
- (b) another company that as a result of the transaction ceases to be a member of the same group as the transferee company.

Relief not withdrawn in case of exempt acquisition

- 3 (1) Section 109 does not apply if –
- (a) the transferee company ceases to be a member of the same group as the transferor company as a result of an acquisition of shares by another company (“the parent company”) in relation to which acquisition relief applies, and 25
- (b) the transferee company is immediately after that acquisition a member of the same group as the parent company (“the new group”). 30
- (2) For this purpose –
- (a) “acquisition relief” means relief under section 75 of the Finance Act 1986; and
- (b) references to an acquisition in relation to which such relief applies are to an acquisition such that an instrument effecting the transfer of the shares is exempt from stamp duty by virtue of that provision. 35
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed –
- (a) the transferee company ceases to be a member of the new group, and 40

- (b) at the time when it ceases to be a member of the new group it holds an estate or interest in land that –
- (i) was transferred to it by the relevant instrument, or
 - (ii) is derived from an estate or interest that was so transferred, and that was not subsequently transferred to it by a duly stamped instrument for which group relief was not claimed,
- section 109 and the provisions of this Schedule apply as if the company had then ceased to be a member of the same group as the transferor company.

Interest

- 4 (1) Where an amount of duty is payable under section 109(2)(b), interest on that amount is payable as from the end of the period of 30 days from the day on which the relevant instrument was executed. 10
- (2) The provisions of section 15A(3) to (5) of the Stamp Act 1891 (c. 39) (rate of interest on unpaid duty, etc) apply in relation to interest under sub-paragraph (1). 15

Duty of transferee company to notify particulars

- 5 (1) The transferee company shall, within the period of 30 days mentioned in section 109(2)(b) within which payment is to be made, notify the Commissioners of –
- (a) the date on which it ceased to be a member of the same group as the transferor company, 20
 - (b) the relevant land held by it at that time
 - (c) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument and the date on which the instrument was stamped, 25
 - (d) the market value of the land transferred to it by the relevant instrument at the date on which that instrument was executed, and
 - (e) the amount of duty and interest payable by it under section 109 or this Schedule.
- (2) In sub-paragraph (1)(b) the “relevant land” held by the transferee company means every estate or interest to in relation to which section 109(1)(c) applies. 30
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), in the second column of the Table, at the appropriate place insert “paragraph 5 of Schedule 34 to the Finance Act 2002”. 35

Determination, collection and recovery of duty and interest

- 6 The provisions of regulations under section 98 of the Finance Act 1986 (c. 41) (stamp duty reserve tax: administration etc), and the provisions of the Taxes Management Act 1970 applied by those regulations, have effect with the necessary modifications in relation to – 40
- (a) the determination by the Commissioners of the duty payable under section 109 or the interest payable thereon,
 - (b) appeals against any such determination, and
 - (c) the collection and recovery of any such duty or interest, 45

as if it were an amount of stamp duty reserve tax.

Recovery of group relief from from another group company or controlling director

- 7 (1) This paragraph applies where –
- (a) an amount is payable under section 109 or this Schedule by the transferee company, 5
 - (b) a notice of determination of the amount payable has been issued by the Commissioners, and
 - (c) the whole or part of that amount is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 8, be required to pay the unpaid amount – 10
- (a) any company that at any relevant time was a member of the same group as the transferee company, and
 - (b) any person who at any relevant time was a controlling director of the transferee company or of a company having control of the transferee company. 15
- (3) For this purpose a “relevant time” means any time between the execution of the relevant instrument and the transferee company ceasing to be a member of the same group as the transferor company.
- (4) In this paragraph – 20
- “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); and
 - “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988). 25

Recovery of group relief from another group company or controlling director: procedure and time limit

- 8 (1) The Commissioners may serve a notice on a person within paragraph 7(2) requiring him, within 30 days of the service of the notice, to pay the amount that remains unpaid. 30
- (2) Any notice under this paragraph must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in paragraph 7(1)(b) is issued. 35
- (3) The notice must state the amount required to be paid by the person on whom the notice is served.
- (4) The notice has effect –
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and 40
 - (b) for the purposes of appeals,
- as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person.
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the transferee company. 45

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

Power to require information

- 9 (1) The Commissioners may by notice require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as the Commissioners may reasonably require for the purposes of section 109 or this Schedule. 5
- (2) A barrister or solicitor shall not be obliged in pursuance of a notice under this paragraph to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained. 10
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to comply with notice to provide information), in the first column of the Table, at the appropriate place insert "paragraph 9 of Schedule 34 to the Finance Act 2002". 15

Supplementary

- 10 Section 109 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

SCHEDULE 35

Section 111

STAMP DUTY: WITHDRAWAL OF RELIEF FOR COMPANY ACQUISITIONS: SUPPLEMENTARY PROVISIONS 20

Introduction

- 1 (1) The provisions of this Schedule supplement section 111 (withdrawal of relief under s.76 of the Finance Act 1986 (c. 41)).
- (2) Expressions used in this Schedule that are defined for the purposes of that section have the same meaning in this Schedule. 25

Change of control due to exempt transfer

- 2 Section 111 does not apply by reason of control of the acquiring company changing as a result of any of the transactions listed in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987 (S.I. 1987/516). 30

Change of control due to intra-group transfer

- 3 (1) Section 111 does not apply by reason of control of the acquiring company changing as a result of a transfer of shares ("the intra-group transfer") in relation to which group relief applies.
- (2) In this paragraph— 35
- (a) "group relief" means relief under section 42 of the Finance Act 1930 (c. 28) or section 11 of the Finance Act (Northern Ireland) 1954

- (c. 23 (N.I.)) (transfer of property between associated bodies corporate); and
- (b) references to a transfer in relation to which group relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty by virtue of either of the group relief provisions. 5
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed –
- (a) a company (“company B”) holding shares in the acquiring company to which the intra-group share transfer related, or that are derived from shares to which that instrument related, ceases to be a member of the same group as the company referred to in section 76 as the target company (“company C”), and 10
- (b) the acquiring company, at that time, holds an estate or interest in land –
- (i) that was transferred to it by the relevant instrument, or 15
- (ii) that is derived from an estate or interest so transferred, and that was not subsequently transferred to it by a duly stamped instrument on which *ad valorem* duty was paid and in relation to which section 76 relief was not claimed,
- the following provisions apply. 20
- (4) In those circumstances –
- (a) section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and
- (b) the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that amount, is payable by the acquiring company within 30 days after company B ceases to be a member of the same group as company C. 25
- (5) In this paragraph – 30
- (a) “company” includes any body corporate; and
- (b) references to a company being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision.

Change of control due to exempt share acquisition 35

- 4 (1) Section 111 does not apply by reason of control of the acquiring company changing as a result of a transfer of shares (“the exempt transfer”) to another company (“the parent company”) in relation to which share acquisition relief applies.
- (2) For this purpose – 40
- (a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c. 41); and
- (b) references to a transfer in relation to which such relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty by virtue of that provision. 45
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed –

- (a) control of the parent company changes at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred, and
 - (b) the acquiring company, at that time, holds an estate or interest in land –
 - (i) that was transferred to it by the relevant instrument, or
 - (ii) that is derived from an estate or interest so transferred, and that was not subsequently transferred to it by a duly stamped instrument on which *ad valorem* duty was paid and in relation to which section 76 relief was not claimed,
- the following provisions apply.
- (4) In those circumstances –
 - (a) section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and
 - (b) the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that additional duty, is payable by the acquiring company within 30 days after control of the parent company changed.

Interest

- 5 (1) Where an amount of duty is payable under section 111 or this Schedule, interest on that amount is payable as from the end of the period of 30 days from the day on which the relevant instrument was executed.
- (2) The provisions of section 15A(3) to (5) of the Stamp Act 1891 (c. 39) (rate of interest on unpaid duty, etc) apply in relation to interest under this paragraph.

Duty of acquiring company to notify particulars

- 6 (1) The acquiring company shall, within the period of 30 days within which payment is to be made, notify the Commissioners of –
 - (a) the date on which the event occurred by reason of which it is liable to make a payment of duty under section 111 or this Schedule,
 - (b) the relevant land held by it at that time
 - (c) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument and the date on which the instrument was stamped,
 - (d) the market value of the land transferred to it by the relevant instrument at the date it was executed, and
 - (e) the amount of duty and interest payable by it.
- (2) In sub-paragraph (1)(b) the “relevant land” held by the acquiring company means every estate or interest to in relation to which section 111(1)(c) applies.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), in the second column of the Table, at the appropriate place insert “paragraph 6 of Schedule 35 to the Finance Act 2002”.

Determination, collection and recovery of duty and interest

- 7 The provisions of regulations under section 98 of the Finance Act 1986 (c. 41) (stamp duty reserve tax: administration etc), and the provisions of the Taxes Management Act 1970 (c. 9) applied by those regulations, have effect with the necessary modifications in relation to – 5
- (a) the determination by the Commissioners of the duty payable under section 111 or this Schedule, or of the interest payable thereon,
 - (b) appeals against any such determination, and
 - (c) the collection and recovery of any such duty or interest,
- as if it were an amount of stamp duty reserve tax. 10

Recovery of section 76 relief from from another group company or controlling director

- 8 (1) This paragraph applies where –
- (a) an amount is payable under section 111 or this Schedule by the acquiring company,
 - (b) a notice of determination of the amount payable has been issued by the Inland Revenue, and 15
 - (c) the whole or part of that amount is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 9, be required to pay the unpaid amount – 20
- (a) any company that at any relevant time was a member of the same group as the acquiring company, and
 - (b) any person who at any relevant time was a controlling director of the acquiring company or of a company having control of the acquiring company. 25
- (3) For this purpose a “relevant time” means any time between the execution of the relevant instrument and the change of control by virtue of which the liability to pay the amount arises.
- (4) In this paragraph –
- (a) references to companies being in the same group are to one company having control of the other or both companies being under the control of the same person or persons; 30
 - (b) “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); and 35
 - (c) “controlling director”, in relation to a company, means a director of the company who has control of it.

Recovery of section 76 relief from another group company or controlling director: procedure and time limit

- 9 (1) The Commissioners may serve a notice on a person within paragraph 8(2) requiring him, within 30 days of the service of the notice, to pay the amount that remains unpaid. 40

- (2) A notice under this paragraph must be served before the end of the period of three years beginning with the date on the notice of determination mentioned in paragraph 8(1)(b) is issued.
- (3) The notice must state the amount required to be paid by the person on whom the notice is served. 5
- (4) The notice has effect –
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
- (b) for the purposes of appeals,
- as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person. 10
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the acquiring company.
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes. 15

Power to require information

- 10 (1) The Commissioners may by notice require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as the Commissioners may reasonably require for the purposes of section 111 or this Schedule. 20
- (2) A barrister or solicitor shall not be obliged in pursuance of a notice under this paragraph to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to comply with notice to provide information), in the first column of the Table, at the appropriate place insert "paragraph 10 of Schedule 35 to the Finance Act 2002". 25

Supplementary

- 11 Section 111 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39). 30

SCHEDULE 36

Section 114(1)

STAMP DUTY: ABOLITION OF DUTY ON INSTRUMENTS RELATING TO GOODWILL:
SUPPLEMENTARY PROVISIONS*Reduction of stamp duty where instrument partly relating to goodwill* 35

- 1 (1) This paragraph applies where stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (c. 16) (conveyance or transfer on sale) is chargeable on an instrument that relates partly to goodwill and partly to property other than goodwill.
- (2) In such a case – 40

- (a) the consideration in respect of which duty would otherwise be charged shall be apportioned, on a just and reasonable basis, as between the goodwill and the other property, and
 - (b) the instrument shall be charged only in respect of the consideration attributed to the other property. 5
- (3) This paragraph applies to instruments executed on or after 23rd April 2002.

Apportionment of consideration for stamp duty purposes

- 2 (1) Where part of the property referred to in section 58(1) of the Stamp Act 1891 (c. 39) (consideration to be apportioned between different instruments as parties think fit) consists of goodwill, that provision shall have effect as if “the parties think fit” read “is just and reasonable”. 10
- (2) Where –
- (a) part of the property referred to in section 58(2) of the Stamp Act 1891 (property contracted to be purchased by two or more persons etc) consists of goodwill, and 15
 - (b) both or (as the case may be) all the relevant persons are connected with one another,
- that provision shall have effect as if the words from “for distinct parts of the consideration” to the end of the subsection read “, the consideration shall be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration.”. 20
- (3) In a case where sub-paragraph (1) or (2) applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty shall have effect as if – 25
- (a) the consideration had been apportioned in a manner that is just and reasonable, and
 - (b) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth). 30
- (4) For the purposes of sub-paragraph (2) –
- (a) a person is a relevant person if he is a person by or for whom the property is contracted to be purchased; 35
 - (b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.
- (5) This paragraph applies to instruments executed on or after 23rd April 2002.

Certification of instruments for stamp duty purposes

- 3 (1) Goodwill shall be disregarded for the purposes of paragraph 6 of Schedule 13 to the Finance Act 1999 (c. 19) (certification of instrument as not forming part of transaction or series of transactions exceeding specified amount). 40
- (2) Any statement as mentioned in paragraph 6(1) of that Schedule shall be construed as leaving out of account any matter which is to be so disregarded.
- (3) This paragraph applies to instruments executed on or after 23rd April 2002. 45

Acquisition under statute

- 4 (1) Section 12 of the Finance Act 1895 (c. 16) (property vested by Act or purchased under statutory powers) does not require any person who is authorised to purchase any property as mentioned in that section after 23rd April 2002 to include any goodwill in the instrument of conveyance required by that section to be produced to the Commissioners. 5
- (2) If the property consists wholly of goodwill no instrument of conveyance need be produced to the Commissioners under that section.
- (3) This paragraph applies where the Act mentioned in that section, and by virtue of which property is vested or a person is authorised to purchase property, is passed after 23rd April 2002. 10

Interpretation

- 5 In this Schedule “the enactments relating to stamp duty” means the Stamp Act 1891 (c.39) and any enactment amending that Act or that is to be construed as one with that Act. 15

SCHEDULE 37

Section 129

AGGREGATES LEVY AMENDMENTS

Introduction

- 1 This Schedule makes amendments to provisions of Part 2 of the Finance Act 2001 (c. 9) (aggregates levy). 20

The charge

- 2 In section 16(1) (charge to aggregates levy), for “A levy” substitute “A tax”.

Meaning of “aggregate” etc

- 3 (1) Section 17 (meaning of “aggregate” etc) is amended as follows.
- (2) In subsection (2) (meaning of “taxable” aggregate), for paragraph (d) substitute— 25
- “(d) it is aggregate that on the commencement date is on a site other than—
- (i) its originating site, or
- (ii) a site that is required to be registered under the name of a person who is the operator, or one of the operators, of that originating site.”. 30
- (3) In subsection (3)(d) (exemption for aggregate won in the course of road works), in sub-paragraph (ii) for “otherwise than wholly or mainly” substitute “not”. 35
- (4) In subsection (4), in paragraph (d) (exemption for cuttings from oil drilling)—

- (a) after “the Petroleum Act 1998” insert “or the Petroleum (Production) Act (Northern Ireland) 1964 (c. 28 (N.I.))”;
- (b) omit the words from “otherwise” to the end (which restrict the exemption to off-shore drilling).

Exempt processes

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- 4 (1) Section 18 (exempt processes) is amended as follows.
- (2) In subsection (2)(c) (exemption for production of lime etc), for “some other substance” substitute “anything else”.
 - (3) In subsection (3) (meaning of “relevant substance”), omit paragraphs (d) (calcite) and (h) (flint).

10

Commercial exploitation

- 5 (1) Section 19 (commercial exploitation) is amended as follows.
- (2) In subsection (2) (description of sites removal of aggregate from which counts as exploitation), in paragraph (b) for the words from “who is the operator” to the end substitute “under whose name that originating site is also registered”.
 - (3) After subsection (3) (meaning of “commercial” exploitation) insert—
 - “(3A) For the purposes of subsection (3)(a) above “business” includes any activity of a Government department, local authority or charity.”.
 - (4) In subsection (4) (exemption in certain cases where aggregate is won from one site and incorporated into a neighbouring site), for the words “adjacent land” in both places substitute “other land”.

15

20

Responsibility for commercial exploitation

- 6 In section 22 (which determines who is taken to be responsible for exploitation of aggregate), at the end of subsection (2) (responsibility for “commercial” exploitation) insert—
- “For the purposes of this subsection “business” includes any activity of a Government department, local authority or charity.”.

25

The register

- 7 In section 24 (the register), in subsection (6) (premises that may be registered) insert after paragraph (c)—
- “(ca) for mixing, otherwise than in permitted circumstances (within the meaning given by section 19(7)), any aggregate with any material or substance other than water,”.

30

Insolvency etc

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- 8 In section 37 (regulations about cases of insolvency etc), in subsection (7) (meaning of “insolvency procedure) omit paragraphs (g) to (j) (appointment of receiver and other interim or provisional orders).

Notification of registrability etc

- 9 (1) Paragraph 1 of Schedule 4 (notification of registrability etc) is amended as follows.
- (2) For sub-paragraph (1) substitute –
- “(1) An unregistered person who – 5
- (a) is required to be registered for the purposes of aggregates levy, or
- (b) has formed the intention of carrying out taxable activities that are registrable,
- shall notify the Commissioners of that fact. 10
- (1A) An unregistered person who –
- (a) would be required to be registered for the purposes of aggregates levy but for an exemption by virtue of regulations under section 24(4) of this Act, or
- (b) has formed the intention of carrying out taxable activities that would be registrable but for such an exemption, 15
- shall, in such cases or circumstances as may be prescribed in the regulations, notify the Commissioners of that fact.
- (1B) For the purposes of sub-paragraphs (1) and (1A) above, taxable activities are “registrable” if a person carrying them out is, by reason of doing so, required by section 24(2) of this Act to be registered for the purposes of aggregates levy.” 20
- (3) In sub-paragraphs (2) and (5), after “sub-paragraph (1)” insert “or (1A)”.

Restriction on powers to provide for set-off

- 10 In paragraph 11 of Schedule 8 (restriction on powers to provide for set-off), in sub-paragraph (2) (meaning of “insolvency procedure”) omit paragraphs (f), (g) and (h) (appointment of receiver and other interim or provisional orders). 25

SCHEDULE 38

Section 131(1)

RECOVERY OF TAXES ETC DUE IN OTHER MEMBER STATES 30

Introduction

- 1 (1) This Schedule applies where in accordance with the Mutual Assistance Recovery Directive an authority in another member State makes a request for the recovery in the United Kingdom of a sum claimed by that authority in that State. 35
- (2) In this Schedule –
- (a) the “Mutual Assistance Recovery Directive” has the meaning given by section 131; and
- (b) the “foreign claim” means the claim in relation to which a request under that Directive is made as mentioned in sub-paragraph (1). 40

Enforcement of claims in the United Kingdom

- 2 (1) Subject to the following provisions of this Schedule—
- (a) such proceedings may be taken by or on behalf of the relevant UK authority to enforce the foreign claim, by way of legal proceedings, distress, diligence or otherwise, as might be taken to enforce a corresponding UK claim, and 5
 - (b) any enactment or rule of law relating to a corresponding UK claim shall apply, with any necessary adaptations, in relation to the foreign claim.
- (2) “The relevant UK authority” means— 10
- (a) in relation to matters corresponding to those within the care and management of the Commissioners of Customs and Excise, those Commissioners;
 - (b) in relation to matters corresponding to those within the care and management of the Commissioners of Inland Revenue, those Commissioners; 15
 - (c) in relation to agricultural levies of the European Community, the relevant Minister, that is—
 - (i) in England, the Secretary of State,
 - (ii) in Scotland, the Scottish Ministers, 20
 - (iii) in Wales, the National Assembly for Wales, and
 - (iv) in Northern Ireland, the Department of Agriculture and Rural Development.
- (3) A “corresponding UK claim” means a claim in the United Kingdom corresponding to the foreign claim. 25
- (4) The enactments referred to in sub-paragraph (1)(b) include, in particular, those relating to the recovery of penalties and of interest on unpaid amounts.

Power to make supplementary provision by regulations

- 3 (1) The Treasury may make provision by regulations—
- (a) as to what is a corresponding UK claim in relation to any description of foreign claim, and 30
 - (b) as to such other procedural and other supplementary matters as appear to them appropriate for implementing the Mutual Assistance Recovery Directive.
- (2) In relation to a case where there is no claim in the United Kingdom that is directly equivalent to a particular description of foreign claim, regulations under sub-paragraph (1)(a) may prescribe as the corresponding UK claim one that appears to the Treasury to be closest to an equivalent. 35
- (3) The power conferred by sub-paragraph (1)(b) includes power to make any provision appearing to the Treasury to be appropriate to give effect to any Commission Directive laying down detailed rules for implementing the Mutual Assistance Recovery Directive. 40
- (4) The relevant UK authority may make provision by regulations as to the application, non-application or adaptation in relation to foreign claims of any enactment or rule of law applicable to corresponding UK claims. 45

This is without prejudice to the application of any such enactment or rule in relation to foreign claims in circumstances not dealt with by regulations under this sub-paragraph.

- (5) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons. 5

Proceedings on contested claims

- 4 (1) Except where permitted by virtue of regulations under paragraph 3(4) applying an enactment that permits such proceedings in the case of a corresponding UK claim, no proceedings under this Schedule shall be taken against a person if he shows that proceedings relevant to his liability on the foreign claim are pending, or are about to be instituted, before a court, tribunal or other competent body in the member State in question. 10
- (2) For this purpose proceedings are pending so long as an appeal may be brought against any decision in the proceedings. 15
- (3) Proceedings under this Schedule may be taken if the proceedings in the member State are not prosecuted or instituted with reasonable expedition.

Claims determined in taxpayer's favour

- 5 (1) No proceedings under this Schedule shall be taken against a person if a final decision on the foreign claim has been given in his favour by a court, tribunal or other competent body in the member State in question. 20
- (2) For this purpose a final decision is one against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought.
- (3) If he shows that such a decision has been given in respect of part of the claim no proceedings under this Schedule shall be taken in relation to that part. 25

Other supplementary provisions

- 6 For the purposes of proceedings under this Schedule –
- (a) a request made by an authority in another member State shall be taken to be duly made in accordance with the Mutual Assistance Recovery Directive unless the contrary is proved, and 30
- (b) except as mentioned in paragraph 5, no question may be raised as to a person's liability on the foreign claim.

SCHEDULE 39

Section 138

REPEALS

PART 1

EXCISE DUTIES

(1) ALCOHOLIC LIQUOR DUTIES

5

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Alcoholic Liquor Duties Act 1979 (c. 4)	Section 1(9).

This repeal shall be deemed to have come into force on 27th April 2002.

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(2) HYDROCARBON OIL DUTIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Hydrocarbon Oil Duties Act 1979 (c. 5)	In section 6AB(1), the words from “and delivered” to the end.
Finance Act 1998 (c. 36)	Section 9(2) and (3).

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- 1 The repeal in the Hydrocarbon Oil Duties Act 1979 has effect in accordance with section 5(8)(c) of this Act.
- 2 The repeals in the Finance Act 1988 have effect in accordance with section 5(8)(b) of this Act.

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(3) AMUSEMENT MACHINE LICENCE DUTY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In section 26(2), the definition of “thirty-five-penny machine”.
Finance Act 1995 (c. 4)	In Schedule 3, paragraph 8(2)(b).

25

These repeals have effect in accordance with section 8(6) of this Act.

(4) BETTING DUTIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Excise Duties (Surcharges or Rebates) Act 1979 (c. 8)	In section 1(3), the words from “, except that if the duty is pool betting duty” to the end.

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<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Betting and Gaming Duties Act 1981 (c. 63)	In section 2(2), paragraph (d) and the word “or” preceding it. In section 9(2), the words “or coupon betting” (in both places). In section 9(3)(a), the words “or coupon betting”. In section 9(3)(aa)(i), the words “or coupon betting”. Section 9(4). Section 11.	5
	In section 12(3), the words “(except in sections 6, 7, 8, 9(2)(a) and 9(5) in their application to coupon betting)”.	10
	In Schedule 1 – (a) in paragraph 3, the words “shall be under the care and management of the Commissioners, and”; (b) paragraphs 4(4) to (6), 6(2)(b), 8 and 12; (c) in paragraph 14(1), the words after paragraph (b).	15
Finance Act 1986 (c. 41)	In Schedule 4, paragraph 2(1).	
Finance Act 1993 (c. 34)	Section 39(a).	
Finance Act 2001 (c. 9)	In Schedule 1, the second paragraph (which begins “In section 6(1)”).	20
		25

- 1 The repeal of section 9(4) of the Betting and Gaming Duties Act 1981 has effect in accordance with section 14(6) of this Act.
- 2 The other repeals have effect in accordance with section 12 of this Act.

(5) VEHICLE EXCISE DUTY 30

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Vehicle Excise and Registration Act 1994 (c. 22)	Section 57(8). In Schedule 1, paragraph 2(4).
Finance Act 1995 (c. 4)	In Schedule 4, paragraph 7.

- 1 The repeal of paragraph 2(4) of Schedule 1 to the Vehicle Excise and Registration Act 1994 has effect subject to the saving in section 20(3) of this Act. 35
- 2 The repeal of paragraph 7 of Schedule 4 to the Finance Act 1995 has effect in accordance with section 18(3) of this Act.

(6) DRAWBACK OF EXCISE DUTY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Customs and Excise Management Act 1979 (c. 2)	Section 133(3).

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PART 2

VALUE ADDED TAX

(1) DISALLOWANCE OF INPUT TAX WHERE CONSIDERATION NOT PAID

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	Section 36(4A) and (5)(ea).
Finance Act 1997 (c. 16)	Section 39(2) to (4).

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These repeals have effect in accordance with section 22(3) of this Act.

(2) INVOICES

15

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	Section 6(9). In paragraph 2 of Schedule 11 – (a) in the heading, the words “; VAT invoices”; (b) in sub-paragraph (1), the words from “and may require” to the end; (c) sub-paragraphs (2) and (2A).
Finance Act 1996 (c. 8)	Section 38(2).

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These repeals have effect in accordance with section 24(5) and (6) of this Act.

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PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

(1) DEDUCTIONS FROM PAYMENTS TO SUB-CONTRACTORS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 559 – (a) in subsection (4), the words from “and the sum so deducted” to the end; (b) subsections (5) and (5A);

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<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1) – <i>cont.</i>	(c) in subsection (4), the words from “and the sum so deducted” to the end;	
Finance Act 1998 (c. 36)	In Schedule 7, in paragraph 1 the words “559(4)(b) and (5) (twice)”. In Schedule 8, paragraph 2(1).	5

These repeals have effect in accordance with section 40(4) of this Act.

(2) COMPANY RECONSTRUCTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	In section 842(3)(c), the words “or amalgamation”.	10
Taxation of Chargeable Gains Act 1992 (c. 12)	In the heading before section 135, the words “and amalgamations”. In section 139(1), in the heading, in subsection (1)(a) and in subsection (5) (twice), the words “or amalgamation”.	15
Finance (No.2) Act 1992 (c. 48)	In section 211(2) – (a) in paragraph (a), and (b) in the closing words, the words “or amalgamation”. In section 214C(2)(a) and (3), the words “or amalgamation”. Section 35(1).	20

These repeals have effect in accordance with paragraphs 7 and 8 of Schedule 9 to this Act. 25

(3) TAPER RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 2A(8)(b)(ii), the words “11 or”.	30
	In Schedule A1 – (a) paragraph 11; (b) in paragraph 22(1), in the definition of “51 per cent subsidiary”, the words “(except in paragraph 11 above)”;	35
	(c) in paragraph 23, the final sentence of sub-paragraph (4), sub-paragraph (5), in sub-paragraph (7) the words “, (5)(b)” and sub-paragraphs (9) and (10);	40
	(d) paragraph 24(6).	

These repeals have effect in accordance with paragraphs 2, 4 and 7 of Schedule 10 to this Act.

(4) GAINS TREATED AS ACCRUING TO SETTLORS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 2(5)(b), the words “77, 86,”. Section 77(6A). Section 86(4A).	5
Finance Act 1998 (c. 36)	In section 86A(8), the words “or aggregate amount”. In Schedule 21, paragraph 6(1) and (2).	10

These repeals have effect in accordance with paragraphs 7 and 8 of Schedule 11 to this Act.

(5) TAX RELIEF FOR RESEARCH AND DEVELOPMENT EXPENDITURE

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<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 2000 (c. 17)	In Schedule 20 – (a) in paragraph 5(1)(c), the words “(within the meaning of section 231A(4) of the Taxes Act 1988)”; (b) in paragraph 12, the word “and” at the end of paragraph (a).	20

These repeals have effect for accounting periods ending on or after 1st April 2002.

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(6) COMMUNITY INVESTMENT TAX CREDIT

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1990 (c. 29)	In section 25(7), the word “and” at the end of paragraph (b).	

This repeal has effect in accordance with section 56(3) and (4)(b) of this Act.

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(7) CARS WITH LOW CARBON DIOXIDE EMISSIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Capital Allowances Act 2001 (c. 2)	In section 39, the word “or” preceding the words “section 45A”.	35

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Capital Allowances Act 2001 (c. 2) – cont.	In section 46(1), the word “or” preceding the words “section 45A”. In section 74(2), the word “and” preceding paragraph (b).	5

These repeals have effect in accordance with section 58 of this Act.

(8) ASSET-LINKED LOAN RELATIONSHIPS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1996 (c. 8)	In section 92, in subsection (1)(e), the word “and”. Section 93(11) and (13).	10

1 The repeal in section 92 of the Finance Act 1996 (c. 8) has effect in accordance with section 71 of this Act.

2 The repeals in section 93 of that Act have effect in accordance with section 74 of this Act. 15

(9) FOREX AND EXCHANGE GAINS AND LOSSES FROM LOAN RELATIONSHIPS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	In section 15(1), the second indent of paragraph 2(3) of Schedule A. Section 56(3A) to (3D). In Schedule 24, paragraphs 13 to 19. In Schedule 27, paragraph 5(2A)(a) so far as relating to sections 125 to 133 of the Finance Act 1993.	20 25
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 117(A1), the words “(subject to sections 117A and 117B below)”. Sections 117A and 117B.	
Finance Act 1993 (c. 34)	Section 60. Sections 125 to 169. Schedules 15 to 17. In Schedule 18, paragraph 2.	30
Finance Act 1994 (c. 9)	Sections 114 to 116. Section 226(2).	35
Finance Act 1995 (c. 4)	Section 52(2). Section 131. In Schedule 24, paragraphs 1 to 3. In Schedule 25, paragraphs 6(5) and 7.	
Finance Act 1996	In section 85(2), the word “and” at the end of paragraph (b). In section 92(6)(b), the words “127 or”.	40

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1996 – <i>cont.</i>	In Schedule 9 – (a) paragraphs 4 and 11(4); (b) in paragraph 13(6), the definition of “related transaction”; (c) in paragraph 15(1), the words “for the purposes of section 84 of this Act”.	5
	In Schedule 11, in paragraph 3A(1)(b), the words “debt or”.	
	In Schedule 14, paragraphs 67 to 74.	10
	In Schedule 15, paragraphs 22 to 24.	
	In Schedule 20, paragraphs 68 to 70.	
Finance Act 1998 (c. 36)	Section 108(3) and (4)(a). In section 109 – (a) subsections (1) and (2); (b) subsection (4) so far as relating to those subsections; (c) subsection (5) so far as relating to the enactments specified in paragraph (a) of it.	15
	Section 110(4)(b).	20
	Schedule 4, paragraph 7.	
Finance Act 2000 (c. 17)	Section 106. In Schedule 22, paragraph 50(2)(b). In Schedule 29, paragraphs 20, 21 and 41 to 43.	25
1	The repeal in Schedule 27 to the Taxes Act 1988 has effect for account periods beginning on or after 1st October 2002.	
2	The other repeals have effect in accordance with section 78(3) of this Act and Schedule 23 to this Act.	

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(10) CORPORATION TAX: CURRENCY

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1993 (c. 34)	In section 93, subsections (3) and (6) and, in subsection (7), the definitions of “branch” and “closing rate/net investment method”.	35
Finance Act 1994 (c. 9)	Section 226(1).	
Finance Act 1998	Section 163(3)(b) and (c).	

These repeals have effect in accordance with section 79 of this Act and Schedule 24 to this Act.

40

(11) LOAN RELATIONSHIPS: GENERAL AMENDMENTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	In section 77(2)(a), sub-paragraph (ii) and the preceding word “or”. Section 403ZC(2). In section 432A(9B), the definition of “money debt”. In section 797A, the second sentence in subsection (5) and in subsection (7). In Schedule 28A –	5
	(a) in paragraph 7, in sub-paragraph (1)(d), the word “and” preceding sub-paragraph (iii), in sub-paragraph (1)(e), the word “and” preceding sub-paragraph (iii), and sub-paragraph (2); (b) in paragraph 16, in sub-paragraph (1)(d), the word “and” preceding sub-paragraph (iii), in sub-paragraph (1)(e), the word “and” preceding sub-paragraph (iii), and sub-paragraph (2).	10 15 20
Finance Act 1988 (c. 39)	In Schedule 6, in paragraph 3 – (a) sub-paragraphs (3)(a), (4)(a) and (5)(a) and (b); (b) in sub-paragraph (5), in the words following paragraph (c), the word “group”; (c) sub-paragraph (6).	25
Finance Act 1996 (c. 8)	In section 83 – (a) in subsection (2), paragraphs (b) and (d) and the word “or” at the end of paragraph (c); (b) subsection (4); (c) in subsection (7), in paragraph (a), the word “(b)”, and paragraph (b) and the preceding word “and”. In section 87 – (a) in subsection (3), in paragraph (a) the words “or in the two years before the beginning of that period”, in paragraph (b) the words “or in those two years”, and paragraph (c) and the preceding word “or”; (b) subsections (6) to (8). Section 89. Section 91. In Schedule 8, paragraph 2. In Schedule 9, in paragraph 17(5), in paragraph (a) the words “or in the period of two years before the beginning of that period” and in paragraph (b) the words “or in those two years”. In Schedule 9, in paragraph 18(4), the definition of “control”.	30 35 40 45 50

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1998 (c. 36)	Section 82(1) and (2)(c) and (e).

These repeals have effect in accordance with section 81(2) of this Act.

(12) DERIVATIVE CONTRACTS

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<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	Section 468AA. In section 807A(7), the definition of “relevant qualifying payment”. In Schedule 5AA –	10
	(a) in paragraph 1, sub-paragraphs (2)(b) and (c) and (3), in sub-paragraph (5), the words “and 396”, in sub-paragraph (6), the words “, corporation tax” and “or 396”, and sub-paragraph (7);	15
	(b) paragraph 2(3);	
	(c) paragraph 4(4A);	
	(d) in paragraph 4A, in sub-paragraph (5)(b), the words “or 396”, and sub-paragraph (10A);	20
	(e) paragraph 6(3A);	
	(f) paragraph 9.	
	In Schedule 27, paragraph 5(2A) so far as relating to sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994.	25
Finance Act 1990 (c. 29)	Section 81(1).	
Finance Act 1994 (c. 9)	Sections 147 to 175. Section 177. Schedule 18.	30
Finance Act 1995 (c. 4)	Section 52(3). Section 132.	
Finance Act 1996 (c. 8)	Section 93A(3)(a) and (7). Section 101(2) to (6). Schedule 12. In Schedule 14, paragraphs 75 to 79. In Schedule 15, paragraph 25. In Schedule 20, paragraph 71.	35
Finance Act 1998 (c. 36)	Section 99(2) and (3). In section 109 –	40
	(a) subsection (3);	
	(b) subsection (4) so far as relating to subsection (3);	
	(c) subsection (5) so far as relating to the enactments specified in paragraph (b) of it.	45
Finance Act 2000 (c. 17)	In Schedule 30, paragraph 24(3).	
Finance Act 2002	Sections 68 and 69.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2002 – cont.	Section 77.

1 The repeal in Schedule 27 to the Taxes Act 1988 has effect for account periods beginning on or after 1st October 2002.

2 The other repeals have effect in accordance with section 82(3) of this Act. 5

(13) DEDUCTION OF TAX: PAYMENTS TO EXEMPT BODIES ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	Section 349B(1)(b) and the word “or” preceding it.	10

This repeal has effect in accordance with section 93(7) of this Act.

(14) GIFTS OF REAL PROPERTY TO CHARITY

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988	In section 587B(9), the word “and” preceding paragraph (d).	15

This repeal has effect in accordance with section 96 of this Act.

(15) REFERENCES TO ACCOUNTING PRACTICE AND PERIODS OF ACCOUNT

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Taxes Management Act 1970 (c. 9)	In section 12AB(5), the definition of “period of account”.	20
Income and Corporation Taxes Act 1988 (c. 1)	Section 43A(2). Section 91A(8). Section 91B(11)(e) and the word “and” preceding it.	25
	In section 297(5B), the second sentence. Section 494AA(2)(b) and the word “or” preceding it.	30
	In section 560(2), the words from “and in paragraph (f)” to the end. In section 834(1), in the definition of “accounting date”, the words from “and “period of account”” to the end.	35
	Section 837A(5). In section 842B(2), the second sentence. In Schedule 5, in paragraphs 2(6) and 6(4), the definitions of “period of account”.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1) – <i>cont.</i>	In Schedule 28B, in paragraph 4(6B), the second sentence.	
Finance Act 1988 (c. 39)	In section 86(3), the definition of “period of account”.	5
Finance Act 1989 (c. 26)	In section 43(9), the definition of “period of account”.	
Taxation of Chargeable Gains Act 1992 (c. 9)	In section 161(3A), the words from “and in paragraph (a)” to the end.	
Finance Act 1997 (c. 16)	In section 13(5B), the second sentence. In Schedule 12 –	10
	(a) in paragraph 1(1)(c), the words “, in the case of companies incorporated in any part of the United Kingdom,” and “for the purposes of the accounts of such companies”;	15
	(b) in paragraph 4(5), the words “, if the recipient were a company incorporated in the United Kingdom,”;	
	(c) in paragraph 15(1)(c), the words “, in the case of companies incorporated in any part of the United Kingdom,” and “for the purposes of the accounts of such companies”;	20
	(d) paragraph 28(1) to (4).	25
Finance Act 1998 (c. 36)	Section 45. In Schedule 18, in paragraph 14(2), the second sentence.	
Finance Act 1999 (c. 16)	In Schedule 6, paragraph 3(5).	
Finance Act 2000 (c. 17)	In Schedule 14, in paragraph 22(4), the second sentence. In Schedule 15, in paragraph 29(4), the second sentence.	30
	In Schedule 20, in paragraph 25(1), the definition of “normal accounting practice”.	
	In Schedule 23, in paragraph 5, the definitions of “normal accounting practice” and “statutory accounts”.	35
Capital Allowances Act 2001 (c. 2)	Section 179(2). Section 219(2).	40

(16) FINANCIAL TRADING STOCK

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Income and Corporation Taxes Act 1988 (c. 1)	Section 100(1B)(a).	45
Finance Act 1988 (c. 39)	In Schedule 12, paragraph 2.	

(17) BANKS ETC IN COMPULSORY LIQUIDATION

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance (No. 2) Act 1992 (c. 48)	In Schedule 12, paragraphs 3(3)(c) and 4(3).	
Finance Act 1998 (c. 36)	In Schedule 7, in paragraph 8, the words “3(3)(c) and”.	5

These repeals have effect in accordance with section 105 of this Act.

PART 4

OTHER TAXES 10

(1) AIR PASSENGER DUTY: EXTENSION OF AREA TO WHICH EEA RATES APPLY

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1994 (c. 9)	In section 30(2), the word “or” preceding paragraph (b).	

This repeal has effect in accordance with section 118 of this Act. 15

(2) CLIMATE CHANGE LEVY

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 2000 (c. 17)	In Schedule 6, in paragraph 20(7), paragraph (c) and the preceding word “and”.	20

This repeal has effect in accordance with section 122(2) of this Act.

(3) AGGREGATES LEVY

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 2001 (c. 9)	In section 17 –	25
	(a) subsection (3)(a);	
	(b) in subsection (4), paragraph (b) and the words in paragraph (d) from “otherwise” to the end.	
	Section 18(3)(d) and (h).	30
	In section 20(1) –	
	(a) the words “and is not rock” in paragraphs (a) and (b);	
	(b) paragraph (c).	
	Section 21(2)(b).	35

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 2001 (c. 9) – <i>cont.</i>	Section 24(6)(b) and (8)(a). Section 37(7)(g) to (j). In Schedule 6, in paragraph 7(1), paragraph (b) and the words from “equal to the amount” to the end. In Schedule 8, in paragraph 11(2), paragraphs (f), (g) and (h).	5
1	The repeals in Schedule 6 to the Finance Act 2001 shall be deemed to have come into force on 1st May 2002.	10
2	The other repeals shall be deemed to have come into force on 1st April 2002.	

PART 5

MISCELLANEOUS

RECOVERY OF TAX DUE IN OTHER MEMBER STATES

15

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Finance Act 1977 (c. 36) Finance Act 1980 (c. 48)	Section 11. In section 17 – (a) subsection (1); (b) in subsection (2A), the words “(1) and”; (c) in subsection (3), the words from the beginning to “passing of this Act”.	20