

Bill 5

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PART 9

INTANGIBLE FIXED ASSETS

CHAPTER 1

INTRODUCTION

Introduction

1 Overview of Part 9 [j062900]

- (1) This Part is about how a company's gains and losses in respect of intangible fixed assets are calculated and brought into account for the purposes of corporation tax.

Origin: FA 2002 Sch.29 para 1(1), (2); drafting.

- (2) See, in particular, Chapter 6 which –
- (a) deals with the use of credits and debits in respect of some such assets in calculating the profits and losses of trades, businesses and other concerns (see sections 37 to 39),
 - (b) imposes a charge on gains calculated by reference to other assets (section 41), and
 - (c) gives an allowance for losses so calculated (see section 43).

Origin: Drafting.

- (3) For the meaning of “intangible fixed assets” and rules about the assets to which this Part applies, see –
- (a) sections 3 to 6,
 - (b) Chapter 10 (excluded assets), and
 - (c) Chapter 16 (pre-FA 2002 assets etc).

Origin: Drafting.

- (4) This Part operates by reference to the accounts of companies and amounts recognised for accounting purposes.

Origin: Drafting.

- (5) For the meaning of “amounts recognised for accounting purposes” and other expressions related to accounting and for rules about “GAAP-compliant accounts”, see sections 7 to 10.

Origin: Drafting.

- (6) Chapters 2 to 6 contain basic rules about the credits and debits to be brought into account for tax purposes in respect of intangible fixed assets.

- (7) For rules about particular situations and cases, see –
- (a) Chapter 7 (roll-over relief in case of realisation and reinvestment),
 - (b) Chapters 8 and 9 (groups of companies),

- (c) Chapter 11 (transfer of business or trade),
- (d) Chapters 12 and 13 (related parties),
- (e) Chapter 14 (further provisions relating to miscellaneous cases), and
- (f) Chapter 15 (adjustments on change of accounting policy).

Origin: Drafting.

- (8) This section needs to be read with section 2 (priority of rules under this Part for corporation tax).

Origin: Drafting.

Priority of rules under this Part

2 Priority of rules under this Part for corporation tax [j062901]

- (1) The amounts to be brought into account in accordance with this Part 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.

Origin: FA 2002 Sch.29 para.1(3).

- (2) Subsection (1) is subject to any indication to the contrary.

Origin: FA 2002 Sch.29 para.1(3).

- (3) In particular, see –
- (a) sections 96 to 102 (exclusion of some assets except for limited purposes), and
 - (b) section 152 (expenditure not generally deductible for tax purposes).

Origin: Drafting.

Intangible fixed assets etc

3 Meaning of “intangible asset” [j062902]

- (1) In this Part “intangible asset” has the meaning it has for accounting purposes.

Origin: FA 2002 Sch.29 para.2(1).

- (2) In particular, “intangible asset” includes intellectual property.

Origin: FA 2002 Sch.29 para.2(2).

- (3) 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 or similar to a right within paragraph (a),
 - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value, or
 - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c).

Origin: FA 2002 Sch.29 para.2(2).

- (4) This section is subject to Chapter 10 (excluded assets).

Origin: FA 2002 Sch.29 para.2(3).

4 Meaning of “intangible fixed asset” [j062903]

- (1) In this Part 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.

Origin: FA 2002 Sch.29 para.3(1).

- (2) In this Part “intangible fixed asset” includes an option or other right—
(a) to acquire an intangible asset that would be a fixed asset if it were acquired, or
(b) to dispose of an intangible fixed asset.

Origin: FA 2002 Sch.29 para.3(2).

- (3) This Part applies to an intangible fixed asset whether or not it is capitalised in the company’s accounts.

Origin: FA 2002 Sch.29 para.3(3).

- (4) Subsection (3) is subject to any indication to the contrary.

Origin: FA 2002 Sch.29 para.3(3).

- (5) This section is subject to any such provision of regulations under section 141 (finance leasing etc) as is mentioned in section 142(1) (assets to be treated as intangible fixed assets of finance lessor).

Origin: FA 2002 Sch.29 para.3(4).

5 Goodwill [j062904]

- (1) This Part applies to goodwill as it applies to an intangible fixed asset.

Origin: FA 2002 Sch.29 para.4(1).

- (2) Subsection (1) is subject to any indication to the contrary.

Origin: FA 2002 Sch.29 para.4(1).

- (3) In this Part “goodwill” has the meaning it has for accounting purposes.

Origin: FA 2002 Sch.29 para.4(2).

6 Meaning of “royalty” [j0629139]

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

Origin: FA 2002 Sch.29 para.139.

*Accounting rules and definitions***7 “Recognised” amounts and “GAAP-compliant accounts” [j0629134]**

- (1) References in this Part to an amount “recognised” in determining a company’s profit or loss for a period are to –
- (a) an amount recognised in –
 - (i) the company’s profit or loss account or income statement for that period,
 - (ii) a statement of total recognised gains and losses for that period,
 - (iii) a statement of changes in equity for that period, or
 - (iv) any other statement of items brought into account in calculating the company’s profits and losses for that period, and
 - (b) an amount that would have been so recognised if such an account or statement had been drawn up for that period in accordance with generally accepted accounting practice.

Origin: FA 2002 Sch.29 para.134(1).

- (2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subsection (1) must be brought into account for the purposes of this Part in calculating the company’s profits and losses for the period to which the statement relates.

Origin: FA 2002 Sch.29 para.134(2).

- (3) Subsection (2) does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.

Origin: FA 2002 Sch.29 para.134(2).

- (4) In this Part “GAAP-compliant accounts” means accounts drawn up in accordance with generally accepted accounting practice.

Origin: FA 2002 Sch.29 para.5(1).

- (5) In the case of a company that is a member of a group, see also section 9.

Origin: Drafting.

8 Companies without GAAP-compliant accounts: meaning of “amounts recognised for accounting purposes” [j062905]

- (1) If a company –
- (a) draws up accounts that are not GAAP-compliant accounts, or
 - (b) does not draw up accounts at all,
- this Part applies as if GAAP-compliant accounts had been drawn up.
- (2) References in this Part to amounts recognised for accounting purposes are references to the amounts which would have been recognised if GAAP-compliant accounts had been drawn up for the period of account in question and any relevant earlier period.

Origin: FA 2002 Sch.29 para.5(1), (2), (3).

- (3) For this purpose a period of account is relevant to a later period if the accounts for the later period rely to any extent on amounts derived from the earlier period.

Origin: FA 2002 Sch.29 para.5(2).

9 GAAP-compliant accounts: reference to consolidated group accounts [j062906]

- (1) In determining whether a company's accounts are GAAP-compliant, reference may be made to any view about –
- (a) the useful life of an asset, or
 - (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.

Origin: FA 2002 Sch.29 para.6(1).

- (2) This section does not apply if the consolidated group accounts –
- (a) are drawn up using a different accounting framework from that used for the company's individual accounts, and
 - (b) as a result are prepared on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from the basis used in the company's individual accounts.

Origin: FA 2002 Sch.29 para.6(2A).

- (3) This section does not apply so far as the consolidated group accounts are prepared –
- (a) in accordance with the requirements of the law of a territory outside the United Kingdom, and
 - (b) on a basis that, in relation to the matters mentioned in subsection (1), substantially diverges from generally accepted accounting practice.

Origin: FA 2002 Sch.29 para.6(3).

10 Accounting value [j0629135a]

In this Part “accounting value”, in relation to an asset, means the net book value (or carrying amount) of the asset recognised for accounting purposes.

Origin: FA 2002 Sch.29 para. 135.

CHAPTER 2

CREDITS IN RESPECT OF INTANGIBLE FIXED ASSETS

11 Overview of Chapter 2 [j062913]

- (1) This Chapter 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 determining the company's profit or loss as they accrue (see section 12),
 - (b) receipts in respect of royalties, so far as the receipts do not give rise to a credit under section 12 (see section 13),

- (c) revaluation of an intangible fixed asset (see section 14),
- (d) credits recognised for accounting purposes in respect of negative goodwill (see section 15), and
- (e) the reversal of previous accounting debits in respect of an intangible fixed asset (see section 16).

Origin: FA 2002 Sch.29 para.13(1).

- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 25).

Origin: FA 2002 Sch.29 para.13(2).

- (3) For the rules about those amounts, see that Chapter.

Origin: Drafting.

12 Receipts recognised as they accrue [j062914]

- (1) If in a period of account a gain representing a receipt in respect of an intangible fixed asset is recognised in determining the company's profit or loss, a corresponding credit must be brought into account for tax purposes.

Origin: FA 2002 Sch. 29 para.14(1).

- (2) The amount of that credit is the same as the amount of the gain recognised by the company for accounting purposes.

Origin: FA 2002 Sch. 29 para.14(2).

- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch. 29 paras.14(2), 136.

13 Receipts in respect of royalties so far as not dealt with under section 12 [j062914a]

- (1) So far as a receipt in respect of any royalty does not give rise to a credit under section 12 in the period of account in which it is received or in a subsequent period of account, a credit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.14A(1).

- (2) The credit must be brought into account in the accounting period in which the receipt is recognised for accounting purposes.

Origin: FA 2002 Sch.29 para.14A(3).

- (3) The amount of the credit is equal to so much of the amount of the receipt as does not give rise to a credit under section 12.

Origin: FA 2002 Sch.29 para.14A(2).

14 Revaluation [j062915]

- (1) If in a period of account there is an increase in the accounting value of an intangible fixed asset on a revaluation, a credit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.15(1).

- (2) The amount of that credit is the lesser of –
- (a) the amount corresponding for tax purposes to the increase (see subsection (3)), and
 - (b) the net total of relevant previous tax debits (see subsection (4)).

Origin: FA 2002 Sch.29 para.15(2).

- (3) The amount corresponding for tax purposes to the increase is –

$$I \times \frac{TV}{AV}$$

where –

I is the increase,

TV is the tax written-down value of the asset immediately before the revaluation, and

AV is the accounting value of the asset by reference to which the revaluation is carried out.

Origin: FA 2002 Sch.29 para.15(3).

- (4) The net total of relevant previous tax debits is –

$$D - C$$

where –

D is the total debits brought into account for tax purposes previously in respect of the asset, and

C is the total credits so brought into account.

Origin: FA 2002 Sch.29 para.15(4).

- (5) For the purposes of this section “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.

Origin: FA 2002 Sch.29 para.15(5).

- (6) This section does not apply to an asset in respect of which an election has been made under section 21 (writing down at fixed rate: election for fixed-rate basis).

Origin: FA 2002 Sch.29 para.15(6).

15 Negative goodwill [j062916]

- (1) If in a period of account a gain is recognised in determining the company’s profit or loss in respect of negative goodwill arising on an acquisition of a

business, a corresponding credit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.16(1).

- (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.

Origin: FA 2002 Sch.29 para.16(2).

16 Reversal of previous accounting loss [j062917]

- (1) This section applies if—
- in a period of account a gain is recognised in determining the company's profit or loss ("the recognised gain"),
 - the gain wholly or partly reverses a loss recognised in a previous period of account ("the reversed loss"), and
 - a debit was brought into account for tax purposes under Chapter 3 (debits in respect of intangible fixed assets) in respect of that loss ("the tax debit").

Origin: FA 2002 Sch.29 para.17(1).

- (2) A corresponding credit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.17(1).

- (3) The amount of that credit is—

$$RG \times \frac{D}{RL}$$

where—

RG is the recognised gain,
D is the tax debit, and
RL is the reversed loss.

Origin: FA 2002 Sch.29 para.17(2).

- (4) This section does not apply to a gain on a revaluation within the meaning of section 14.

Origin: FA 2002 Sch.29 para.17(3).

CHAPTER 3

DEBITS IN RESPECT OF INTANGIBLE FIXED ASSETS

17 Overview of Chapter 3 [j062907]

- (1) This Chapter provides for debits to be brought into account by a company for tax purposes in respect of—
- expenditure on an intangible fixed asset that is written off for accounting purposes as it is incurred (see section 19),
 - writing down the capitalised cost of an intangible fixed asset—

- (i) on an accounting basis (see section 20), or
- (ii) on a fixed-rate basis (see sections 21 and 22), and
- (c) the reversal of a previous accounting gain in respect of an intangible fixed asset (see section 23).

Origin: FA 2002 Sch.29 para.7(1).

- (2) This Chapter does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Chapter 4 (see section 25).

Origin: FA 2002 Sch.29 para.7(2).

- (3) For the rules about those amounts, see that Chapter.

Origin: Drafting.

18 References to expenditure on an asset [j0629133]

- (1) References in this Part to expenditure on an asset are to any expenditure (including abortive expenditure) –
 - (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.

Origin: FA 2002 Sch.29 para.133(1).

- (2) No account may be taken of capital expenditure on tangible assets in determining for the purposes of this Part the amount of expenditure on an intangible asset.

Origin: FA 2002 Sch.29 para.133(2).

- (3) In subsection (2) “capital expenditure” has the same meaning as in the Capital Allowances Act 2001 (c. 2).

Origin: FA 2002 Sch.29 para.133(2).

- (4) If expenditure is incurred partly as mentioned in subsection (1) or (2) and partly otherwise, any necessary apportionment must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.133(3).

19 Expenditure written off as it is incurred [j062908]

- (1) If in a period of account expenditure on an intangible fixed asset is recognised in determining a company’s profit or loss, a corresponding debit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.8(1).

- (2) 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.

Origin: FA 2002 Sch.29 para.8(2).

- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch.29 paras.8(2), 136.

- (4) This section does not apply if the loss represents previously capitalised expenditure.

Origin: FA 2002 Sch.29 para.8(4).

- (5) Section {j031701} (patent royalties) does not prevent a debit from being brought into account in accordance with this section, and so given effect under Chapter 6.

Origin: FA 2002 Sch.29 para.8(3).

20 Writing down on accounting basis [j062909]

- (1) If in a period of account a loss is recognised in determining a company's profit or loss in respect of capitalised expenditure on an intangible fixed asset –
- by way of amortisation, or
 - as a result of an impairment review,
- a corresponding debit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.9(1).

- (2) The reference in subsection (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.

Origin: FA 2002 Sch.29 para.9(2).

- (3) In the period of account in which expenditure on an asset is capitalised the amount of the debit for tax purposes in respect of the expenditure is –

$$L \times \frac{E}{CE}$$

where –

L is the amount of the loss recognised for accounting purposes,

E is the amount of expenditure on the asset that is recognised for tax purposes, and

CE is the amount capitalised in respect of expenditure on the asset.

Origin: FA 2002 Sch.29 para.9(3).

- (4) For the purposes of subsection (3), the amount of 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.

Origin: FA 2002 Sch.29 para.9(4).

- (5) Subsection (4) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch.29 paras.9(4), 136.

- (6) In a subsequent period of account the amount of the debit for tax purposes in respect of the expenditure on an asset is –

$$L \times \frac{WDV}{AV}$$

where –

L is the amount of the loss recognised for accounting purposes,
WDV is the tax written-down value of the asset (see section 33) immediately before the amortisation charge is made or, as the case may be, the impairment loss is recognised for accounting purposes, and
AV is the value of the asset recognised for accounting purposes immediately before the amortisation charge or, as the case may be, the impairment review.

Origin: FA 2002 Sch.29 para.9(5).

- (7) In this section “capitalised” means capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.9(6).

- (8) This section does not apply to an asset in respect of which an election is made under section 21.

Origin: FA 2002 Sch.29 para.10(6).

21 Writing down at fixed rate: election for fixed-rate basis [j062910]

- (1) A company may elect to write down the cost of an intangible fixed asset for tax purposes at a fixed rate.

Origin: FA 2002 Sch.29 para.10(1).

- (2) The election may be made whether or not the asset is written down for accounting purposes.

Origin: FA 2002 Sch.29 para.10(2).

- (3) The election may only be made –
- in writing,
 - to an officer of Revenue and Customs, and
 - no later than 2 years after the end of the accounting period in which the asset is created or acquired by the company.

Origin: FA 2002 Sch.29 para.10(3).

- (4) The election applies to all expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.10(4).

- (5) The election is irrevocable.

Origin: FA 2002 Sch.29 para.10(5).

22 Writing down at fixed rate: calculation [j062911]

- (1) If an election is made under section 21 for writing down at a fixed rate, a debit equal to the lesser of –
- 4% of the cost of the asset, and
 - the balance of the tax written-down value,

must be brought into account for tax purposes in each accounting period beginning with that in which the relevant expenditure is incurred.

Origin: FA 2002 Sch.29 para.11(1).

- (2) If the accounting period is less than 12 months, the amount mentioned in subsection (1)(a) must be proportionately reduced.

Origin: FA 2002 Sch.29 para.11(2).

- (3) In this section “the cost of the asset” means the cost recognised for tax purposes.

Origin: FA 2002 Sch.29 para.11(3).

- (4) 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.

Origin: FA 2002 Sch.29 para.11(4).

- (5) Subsection (4) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm’s length).

Origin: FA 2002 Sch.29 paras.11(4), 136.

- (6) If there is a part realisation of the asset (see section 25(4)), the reference in subsection (1)(a) to the cost of the asset must be read as a reference to the sum of—

- (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 recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.11(5).

- (7) If there is a further part realisation, subsection (6) applies again.

Origin: FA 2002 Sch.29 para.11(6).

23 Reversal of previous accounting gain [j062912]

- (1) This section applies if—
- (a) in a period of account a loss is recognised in determining a company’s profit or loss (“the recognised loss”),
 - (b) the loss wholly or partly reverses a gain recognised in a previous period of account (“the reversed gain”), and
 - (c) a credit was brought into account for tax purposes under Chapter 2 (credits in respect of intangible fixed assets) in respect of that gain (“the previous credit”).

Origin: FA 2002 Sch.29 para.12(1).

- (2) A corresponding debit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.12(1).

- (3) The amount of that debit is –

$$RL \times \frac{PC}{RG}$$

where –

RL is the recognised loss,
PC is the previous credit, and
RG is the reversed gain.

Origin: FA 2002 Sch.29 para.12(2).

- (4) References in this section to the recognition of a loss that reverses a gain recognised in a previous period of account do not include a loss recognised –
- (a) by way of amortisation of an asset that has previously been the subject of a revaluation, or
 - (b) as a result of an impairment review of such an asset.

Origin: FA 2002 Sch.29 para.12(3).

- (5) In subsection (4) “revaluation” has the same meaning as in section 14 (see subsection (5) of that section).

Origin: FA 2002 Sch.29 para.12(3).

CHAPTER 4

REALISATION OF INTANGIBLE FIXED ASSETS

24 Overview of Chapter 4 [j062918]

- (1) This Chapter provides for credits or debits to be brought into account for tax purposes on the realisation by a company of an intangible fixed asset.
- Origin: FA 2002 Sch.29 para.18.
- (2) Sections 26 to 29 are subject to Chapter 7 (roll-over relief in case of realisation and reinvestment).
- Origin: FA 2002 Sch.29 para.25.
- (3) This Chapter is also relevant for determining –
- (a) whether an asset is a chargeable intangible asset for the purposes of this Part, and
 - (b) whether a gain is a chargeable realisation gain for the purposes of this Part.

Origin: Drafting.

- (4) For the meaning of “chargeable intangible asset” and “chargeable realisation gain”, see section 32.

Origin: Drafting.

25 Meaning of “realisation” [j062919]

- (1) References in this Part 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.

Origin: FA 2002 Sch.29 para.19(1).

- (2) In subsection (1) “transaction” includes any event giving rise to a gain recognised for accounting purposes.

Origin: FA 2002 Sch.29 para.19(1).

- (3) In relation to an intangible fixed asset that has no balance sheet value (or no longer has a balance sheet value), subsections (1) and (2) apply as if it did have a balance sheet value.

Origin: FA 2002 Sch.29 para.19(2).

- (4) References in this Part to a “part realisation” are to a realisation falling within subsection (1)(b).

Origin: FA 2002 Sch.29 para.19(3).

26 Realisation of asset written down for tax purposes [j062920]

- (1) This section applies if there is a realisation of an intangible fixed asset in respect of which debits have been brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.20(1).

- (2) If the proceeds of realisation exceed the tax written-down value of the asset, a credit equal to the excess must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.20(2).

- (3) If the proceeds of realisation are less than the tax written-down value of the asset, a debit equal to the shortfall must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.20(2).

- (4) If there are no proceeds of realisation, a debit equal to the tax written-down value must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.20(2).

- (5) References in this section to the tax written-down value of an asset are to its tax written-down value immediately before the realisation.

Origin: FA 2002 Sch.29 para.20(3).

27 Realisation of asset shown in balance sheet and not written down for tax purposes [j062921]

- (1) This section applies if—
 - (a) there is a realisation of an intangible fixed asset to which section 26 does not apply, and

(b) a value is shown for the asset in the company's balance sheet.

Origin: FA 2002 Sch.29 para.21(1).

(2) If the proceeds of realisation exceed the cost of the asset, a credit equal to the excess must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.21(2).

(3) If the proceeds of realisation are less than the cost of the asset, a debit equal to the shortfall must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.21(2).

(4) If there are no proceeds of realisation, a debit equal to the cost of the asset must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.21(2).

(5) In this section "the cost of the asset" means the cost recognised for tax purposes.

Origin: FA 2002 Sch.29 para.21(3).

(6) 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.

Origin: FA 2002 Sch.29 paras.21(4), 136.

(7) Subsection (6) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch.29 paras.21(4), 136.

(8) If this section has applied on a part realisation of an asset and applies again (on the realisation of the unrealised asset) the references in subsections (2) to (4) to the cost of the asset must be read as references to the sum of—

- (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 recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.21(5).

(9) If there is a further part realisation, subsection (8) applies again.

Origin: FA 2002 Sch.29 para.21(6).

28 Apportionment in case of part realisation [j062922]

(1) In the case of a part realisation—

- (a) the references in section 26 to the tax written-down value of the asset, and
 - (b) the references in section 27 to the cost of the asset,
- must be read as references to the appropriate proportion of that amount.

Origin: FA 2002 Sch.29 para.22(1).

- (2) That proportion is –

$$\frac{AVB - AVA}{AVB}$$

where –

AVB is the accounting value immediately before the realisation, and
AVA is the accounting value immediately after the realisation.

Origin: FA 2002 Sch.29 para.22(2).

29 Realisation of asset not shown in balance sheet [j062923]

- (1) This section applies if –
- (a) there is a realisation of an intangible fixed asset, and
 - (b) neither section 26 (realisation of asset written down for tax purposes) nor section 27 (realisation of asset shown in balance sheet and not written down for tax purposes) applies.

Origin: FA 2002 Sch.29 para.23(1).

- (2) A credit equal to any proceeds of realisation must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.23(2).

30 Meaning of “proceeds of realisation” [j062924]

- (1) In this Part “proceeds of realisation” of an asset means the amount recognised for accounting purposes as the proceeds of realisation, less the amount so recognised as incidental costs of realisation.

Origin: FA 2002 Sch.29 para.24(1).

- (2) The amounts referred to in subsection (1) are subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm’s length).

Origin: FA 2002 Sch.29 paras.24(2), 136.

31 Abortive expenditure on realisation [j062926]

- (1) This section applies if –
- (a) in a period of account a loss is recognised in determining the company’s profit or loss in respect of expenditure by the company for the purposes of a transaction,
 - (b) the transaction does not proceed to completion, but
 - (c) were it completed, it would constitute a realisation of an intangible fixed asset.

Origin: FA 2002 Sch.29 para.26(1).

- (2) A corresponding debit must be brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.26(1).

- (3) 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.

Origin: FA 2002 Sch.29 para.26(2).

- (4) Subsection (3) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch.29 paras.26(2), 136.

32 Meaning of “chargeable intangible asset” and “chargeable realisation gain” [j0629137]

- (1) For the purposes of this Part, an asset is a “chargeable intangible asset” in relation to a company at any time if any gain on its realisation by the company at that time would be a chargeable realisation gain.

Origin: FA 2002 Sch.29 para.137(1).

- (2) For the purposes of this Part, “chargeable realisation gain”, in relation to an asset, means a gain on the realisation of the asset that gives rise to a credit required to be brought into account under this Chapter.

Origin: FA 2002 Sch.29 para.137(1).

- (3) For the purposes of subsections (1) and (2), there is a gain on the realisation of an asset in any case if section 26(2), 27(2) or 29(2) applies.

Origin: FA 2002 Sch.29 para.137(2).

- (4) For the purpose of subsections (1) and (2), ignore any question whether –
(a) relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) is available, or
(b) a transfer of an asset is tax-neutral for the purposes of this Part (see section 65).

Origin: FA 2002 Sch.29 para.137(2).

CHAPTER 5

CALCULATION OF TAX WRITTEN-DOWN VALUE

33 Asset written down on accounting basis [j062927]

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset to which section 20 (writing down on accounting basis) applies is the cost of the asset recognised for tax purposes, less the total net debits brought into account for tax purposes previously in respect of the asset.

Origin: FA 2002 Sch.29 para.27(1).

- (2) For the purposes of subsection (1) 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.

Origin: FA 2002 Sch.29 para.27(2).

- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm's length).

Origin: FA 2002 Sch.29 paras.27(2), 136.

- (4) For the purposes of subsection (1) “the total net debits brought into account for tax purposes previously in respect of the asset”, means the total debits so brought into account, less the total credits so brought into account (if any).

Origin: FA 2002 Sch.29 para.27(1).

- (5) In the case of an asset that has been the subject of a part realisation, this section is subject to section 35.

Origin: FA 2002 Sch.29 para 27(3).

- (6) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15.

Origin: FA 2002 Sch.29 para 27(3).

34 Asset written down at fixed rate [j062928]

- (1) For the purposes of this Part, the tax written-down value of an intangible fixed asset in respect of which an election has been made under section 21 (writing down at fixed rate: election for fixed-rate basis) is the cost of the asset recognised for tax purposes, less any debits brought into account for tax purposes previously in respect of the asset under section 22 (writing down at fixed rate: calculation).

Origin: FA 2002 Sch.29 para.28(1).

- (2) For the purposes of subsection (1), 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.

Origin: FA 2002 Sch.29 para.28(2).

- (3) Subsection (2) is subject to any adjustments required by this Part or Schedule 28AA to ICTA (provision not at arm’s length).

Origin: FA 2002 Sch.29 paras.28(2), 136.

- (4) In the case of an asset that has been the subject of a part realisation, this section is subject to section 35.

Origin: FA 2002 Sch.29 para 28(3).

- (5) In the case of an asset that has been subject to adjustment on a change of accounting policy, this section is subject to Chapter 15.

Origin: FA 2002 Sch.29 para 28(3).

35 Effect of part realisation of asset [j062929]

- (1) The tax written-down value of an intangible asset that has been the subject of a part realisation is determined as follows.

Origin: FA 2002 Sch.29 para.29(1).

- (2) Immediately after the part realisation the tax written-down value of the asset is –

$$\text{WDVB} \times \frac{\text{AVA}}{\text{AVB}}$$

where –

WDVB is the tax written-down value of the asset immediately before the part realisation,

AVA is the accounting value of the asset immediately after the part realisation, and

AVB is the accounting value immediately before the part realisation.

[Origin: FA 2002 Sch.29 para.29\(2\).](#)

- (3) Subsequently, the tax written-down value of the asset is determined in accordance with section 33 or 34, but subject to subsections (4) and (5).

[Origin: FA 2002 Sch.29 para.29\(3\).](#)

- (4) The cost of the asset recognised for tax purposes is the sum of –
- (a) the tax written-down value in accordance with subsection (2), and
 - (b) the cost recognised for tax purposes of subsequent expenditure on the asset that is capitalised for accounting purposes.

[Origin: FA 2002 Sch.29 para.29\(3\).](#)

- (5) Only credits and debits brought into account for tax purposes after the part realisation are taken account of.

[Origin: FA 2002 Sch.29 para.29\(3\).](#)

- (6) If there is a further part realisation, subsections (1) to (5) apply again.

[Origin: FA 2002 Sch.29 para.29\(4\).](#)

- (7) If there is a subsequent change of accounting policy affecting the asset, Chapter 15 (adjustments on change of accounting policy) applies.

[Origin: FA 2002 Sch.29 para.29\(5\).](#)

CHAPTER 6

HOW CREDITS AND DEBITS ARE GIVEN EFFECT

36 Overview of Chapter 6 [\[j062930\]](#)

- (1) This Chapter is about how credits and debits to be brought into account for tax purposes under this Part are given effect.

[Origin: FA 2002 Sch.29 para.30\(1\).](#)

- (2) Credits and debits in respect of assets held for the purposes mentioned in any of the following sections are given effect in accordance with that section –

- (a) section 37 (assets held for purposes of trade),
- (b) section 38 (assets held for purposes of property business),

- (c) section 39 (assets held for purposes of mines, transport undertakings etc).

Origin: FA 2002 Sch.29 para.30(2).

- (3) Credits and debits in respect of intangible fixed assets that are not within sections 37 to 39 are given effect in accordance with sections 40 and 43.

Origin: FA 2002 Sch.29 para.30(3).

- (4) In this Part credits and debits within subsection (3) are referred to respectively as “non-trading credits” and “non-trading debits”.

Origin: Drafting.

- (5) If an asset is held for purposes falling within more than one of the sections specified in subsection (2), any necessary apportionment must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.30(4).

37 Assets held for purposes of trade [j062931]

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a trade carried on by it in that period.

Origin: FA 2002 Sch.29 para.31.

- (2) The credits are given effect by treating them as receipts of the trade in calculating the profits of the trade for tax purposes.

Origin: FA 2002 Sch.29 para.31.

- (3) The debits are given effect by treating them as expenses of the trade in calculating the profits of the trade for tax purposes.

Origin: FA 2002 Sch.29 para.31.

38 Assets held for purposes of property business [j062932]

- (1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a property business carried on by it in that period.

Origin: FA 2002 Sch.29 para.32(1).

- (2) The credits are given effect by treating them as receipts of the business in calculating the profits of the business for tax purposes.

Origin: FA 2002 Sch.29 para.32(1).

- (3) The debits are given effect by treating them as expenses of the business in calculating the profits of the business for tax purposes.

Origin: FA 2002 Sch.29 para.32(1).

- (4) In subsection (1) “property business” means –
- (a) an ordinary property business,
 - (b) a furnished holiday lettings business, or

(c) an overseas property business.

Origin: FA 2002 Sch.29 para.32(2).

(5) In this section –

“ordinary property business” means a UK property business except in so far as it is a furnished holiday lettings business, and

“furnished holiday lettings business” means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation (as defined in section [j190001](#)) in the United Kingdom.

Origin: FA 2002 Sch.29 para.32(3).

39 Assets held for purposes of mines, transport undertakings, etc [j062933](#)

(1) This section applies if credits or debits are to be brought into account in an accounting period in respect of an asset held by a company for the purposes of a concern listed in section [j030106](#) (mines, transport undertakings etc) that is carried on by it in that period.

Origin: FA 2002 Sch.29 para.33.

(2) The credits are given effect by treating them as receipts of the concern in calculating the profits of the concern under Part 3 (trading income).

Origin: FA 2002 Sch.29 para.33.

(3) The debits are given effect by treating them as expenses of the concern in calculating the profits of the concern under that Part.

Origin: FA 2002 Sch.29 para.33.

40 Non-trading gains and losses [j062934](#)

(1) If there are non-trading credits or debits in an accounting period in respect of intangible fixed assets, the company’s non-trading gain or loss on such assets in the period must be calculated.

Origin: FA 2002 Sch.29 para.34(1).

(2) There is a non-trading gain on intangible fixed assets in an accounting period if subsection (3) or (4) applies.

Origin: FA 2002 Sch.29 para.34(2).

(3) If in the accounting period –

(a) there are non-trading credits, but

(b) there are no non-trading debits,

there is a non-trading gain on intangible fixed assets equal to the sum of the credits.

Origin: FA 2002 Sch.29 para.34(2).

(4) If in the accounting period –

(a) there are both non-trading credits and non-trading debits, and

(b) the total non-trading credits exceed the total non-trading debits,

there is a non-trading gain on intangible fixed assets equal to the excess.

Origin: FA 2002 Sch.29 para.34(2).

- (5) There is a non-trading loss on intangible fixed assets in an accounting period if subsection (6) or (7) applies.

Origin: FA 2002 Sch.29 para.34(2).

- (6) If in the accounting period –
(a) there are non-trading debits, but
(b) there are no non-trading credits,
there is a non-trading loss on intangible fixed assets equal to the sum of the debits.

Origin: FA 2002 Sch.29 para.34(3).

- (7) If in the accounting period –
(a) there are both non-trading credits and non-trading debits, and
(b) the total non-trading debits exceed the total non-trading credits,
there is a non-trading loss on intangible fixed assets equal to the excess.

Origin: FA 2002 Sch.29 para.34(3).

- (8) For the treatment of non-trading gains and losses see –
(a) section 41 (charge to tax on non-trading gains on intangible fixed assets), and
(b) section 43 (treatment of non-trading losses).

Origin: Drafting.

41 Charge to tax on non-trading gains on intangible fixed assets [j062934a]

- (1) Corporation tax is charged on non-trading gains arising to a company on intangible fixed assets.

Origin: ICTA s.18(1), (2), (3) (“Case VI”); FA 2002 Sch.29 para.34(4).

- (2) Such gains are treated as income.

Origin: FA 2002 Sch.29 para.1(1).

42 Income charged under section 41 [j062934b]

Tax is charged under section 41 on the full amount of the gains arising in the accounting period.

Origin: ICTA s.70(1).

43 Treatment of non-trading losses [j062935]

- (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.

Origin: FA 2002 Sch.29 para.35(1).

- (2) Such a claim must be made –
(a) not later than the end of the period of 2 years immediately following the end of the accounting period to which it relates, or

- (b) within such further period as an officer of Revenue and Customs may allow.

Origin: FA 2002 Sch.29 para.35(2); Annex 1, Change [jc209].

- (3) To the extent that the loss is not—
 - (a) set off against total profits on a claim under subsection (1), or
 - (b) surrendered by way of group relief (see section 403 of ICTA),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.

Origin: FA 2002 Sch.29 para.35(3).

CHAPTER 7

ROLL-OVER RELIEF IN CASE OF REALISATION AND REINVESTMENT

When the relief is given

44 The relief: the “old asset” and “other assets” [j062937]

- (1) This Chapter provides for relief if a company realises an intangible fixed asset and incurs expenditure on other intangible fixed assets.

Origin: FA 2002 Sch.29 para.37(1).

- (2) In this Chapter references to the “old asset” are references to the asset that is realised and references to “other assets” are references to the other assets on which expenditure is incurred.

Origin: FA 2002 Sch.29 para.37(1).

- (3) A company is entitled to relief under this Chapter only if—
 - (a) the conditions in section 45 are met in relation to the old asset and its realisation,
 - (b) the conditions in section 46 are met in relation to the expenditure on other assets, and
 - (c) the company claims the relief in accordance with section 47.

Origin: FA 2002 Sch.29 para.37(2).

- (4) See also the following provisions (which extend or restrict the circumstances in which relief is available)—
 - (a) sections 66 to 68 (reinvestment by group members),
 - (b) section 79 (application of roll-over relief in relation to degrouping charge),
 - (c) section 82 (application of roll-over relief in relation to reallocated degrouping charge),
 - (d) section 137 (exclusion of roll-over relief in case of part realisation involving related party acquisition), and
 - (e) sections 184 and 185 (roll-over relief for disposals of pre-FA 2002 assets).

Origin: Drafting.

45 Conditions relating to the old asset and its realisation [j062938]

- (1) The old asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company (but see subsection (5)).

Origin: FA 2002 Sch.29 para.38(1).

- (2) The proceeds of realisation of the old asset must exceed –
- the cost of the asset, or
 - in the case of a part realisation, the appropriate proportion of the cost of the asset (see section 49(1) and (2)), or
 - in the case of the realisation of an asset that has previously been the subject of a part realisation, the adjusted cost of the asset (see section 49(3)).

Origin: FA 2002 Sch.29 para.38(1).

- (3) In subsection (2) “the cost of the asset” means the total capitalised expenditure on the asset recognised for tax purposes.

Origin: FA 2002 Sch.29 para.38(3).

- (4) The condition in subsection (2) is met if the old asset has no cost as defined in subsection (3).

Origin: FA 2002 Sch.29 para.38(4).

- (5) Subsection (6) applies if the old asset was a chargeable intangible asset of the company –
- at the time of its realisation, and
 - for a substantial proportion of the period during which it was held by the company, but not for the whole of that period.

Origin: FA 2002 Sch.29 para.38(2).

- (6) The same proportion of the asset is treated for the purposes of this Chapter as if it were a separate asset in relation to which the condition in subsection (1) was wholly met.

Origin: FA 2002 Sch.29 para.38(2).

- (7) Any apportionment necessary for the purposes of subsections (5) and (6) must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.38(2).

46 Conditions relating to expenditure on other assets [j062939]

- (1) The expenditure on other assets must be incurred in the period –
- beginning 12 months before the date of realisation of the old asset or at such earlier time as an officer of Revenue and Customs may by notice allow, and
 - ending 3 years after the date of realisation of the old asset or at such later time as an officer of Revenue and Customs may by notice allow.

Origin: FA 2002 Sch.29 para.39(1); Annex 1, Change [jc209].

- (2) The expenditure on other assets must be capitalised by the company for accounting purposes.

Origin: FA 2002 Sch.29 para.39(1).

- (3) Immediately after the expenditure is incurred the other assets must be chargeable intangible assets in relation to the company.

Origin: FA 2002 Sch.29 para.39(1).

- (4) For the purposes of this section expenditure is treated as incurred when it is recognised for accounting purposes.

Origin: FA 2002 Sch.29 para.39(2).

47 Claim for relief [j062940]

A claim by a company for relief under this Chapter must specify –

- (a) the old assets to which the claim relates,
- (b) the amount of the relief claimed in relation to each old asset, and
- (c) in relation to each old asset, the expenditure on other assets by reference to which relief is claimed.

Origin: FA 2002 Sch.29 para.40.

How the relief is given

48 How the relief is given: general [j062941]

- (1) A company that is entitled to relief under this Chapter is treated for the purposes of this Part as if –
 - (a) the proceeds of realisation of the old asset, and
 - (b) the cost recognised for tax purposes of acquiring the other assets, were each reduced by the amount available for relief.

Origin: FA 2002 Sch.29 para.41(1).

- (2) If the qualifying expenditure on other assets equals or exceeds 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.

Origin: FA 2002 Sch.29 para.41(2).

- (3) If the qualifying expenditure on other assets is less than the proceeds of realisation of the old asset, the amount available for relief is the amount by which the qualifying expenditure on other assets exceeds the cost of the old asset.

Origin: FA 2002 Sch.29 para.41(3).

- (4) In this section “qualifying expenditure” means expenditure in relation to which the conditions in section 46 are met.

Origin: FA 2002 Sch.29 para.41(4).

- (5) In this section “the cost of the old asset” means the total capitalised expenditure on the asset recognised for tax purposes, but –

- (a) in the case of a part realisation, references to the cost of the old asset are references to the appropriate proportion of the cost (see section 49(1) and (2)), and
- (b) in the case of the realisation of an asset that has previously been the subject of a part realisation, references to the cost of the old asset are references to the adjusted cost (see section 49(3)).

Origin: FA 2002 Sch.29 para.41(4).

- (6) The relief does not affect the treatment of—
 - (a) any other party to any transaction involved in the realisation of the old asset, or
 - (b) the expenditure on the other assets,
 for any purpose of the enactments relating to income tax, corporation tax or chargeable gains.

Origin: FA 2002 Sch.29 paras.41(5), 142.

49 Determination of appropriate proportion of cost and adjusted cost [j062942]

- (1) In the case of a part realisation, any reference in section 45 or 48 to the appropriate proportion of the cost of the old asset is to—

$$\frac{AVB - AVA}{AVB}$$

where—

AVB is the accounting value immediately before the part realisation, and
 AVA is the accounting value immediately after the part realisation.

Origin: FA 2002 Sch.29 para.42(1).

- (2) If the old asset has previously been the subject of a part realisation, the reference in subsection (1) to the cost of the old asset is a reference to the adjusted cost.

Origin: FA 2002 Sch.29 para.42(2).

- (3) References in sections 45 and 48 and subsection (2) to the adjusted cost are references to the cost of the old asset, less the sum of the amounts given by subsections (1) and (2) in relation to earlier part realisations.

Origin: FA 2002 Sch.29 para.42(3).

50 References to cost of asset where asset affected by change of accounting policy [j062942A]

- (1) In the case of an asset to which Chapter 15 has applied (adjustments on change of accounting policy) the references in this Chapter to the cost of the asset must be read as follows.

Origin: FA 2002 Sch.29 para.42A(1).

- (2) If section 159 (change of accounting policy involving change of value) applied, the references are unaffected.

Origin: FA 2002 Sch.29 para.42A(2).

- (3) If section 161 or 163 (change of accounting policy involving disaggregation) applied, the references to the cost of the asset must be read as references to the appropriate proportion of that cost.

Origin: FA 2002 Sch.29 para.42A(3).

- (4) For the purposes of subsection (3) the appropriate proportion is determined by applying to the cost of the asset the same fraction as is applied by section 162(2) or (3) or 163(3), as the case may be, to determine the tax written-down value of the asset after the change.

Origin: FA 2002 Sch.29 para.42A(3).

- (5) References in this section to sections 159, 161, 162 and 163 include references to those provisions as applied by section 164.

Origin: FA 2002 Sch.29 para.42A(4).

51 Declaration of provisional entitlement to relief [j062943]

- (1) A company realising an intangible fixed asset may make a declaration of provisional entitlement to relief under this Chapter.

Origin: FA 2002 Sch.29 para.43(1).

- (2) While the declaration continues in force, this Chapter applies as if the conditions for relief under this Chapter were met.

Origin: FA 2002 Sch.29 para.43(3).

- (3) 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 Chapter, and
- (c) accordingly is provisionally entitled to relief of a specified amount.

Origin: FA 2002 Sch.29 para.43(2).

- (4) A declaration of provisional entitlement ceases to have effect if or to the extent that –

- (a) it is withdrawn, or
- (b) it is superseded by a claim for relief under this Chapter.

Origin: FA 2002 Sch.29 para.43(4).

- (5) So far as not previously withdrawn or superseded, a declaration of provisional entitlement ceases to have effect 4 years after the end of the accounting period in which the realisation took place.

Origin: FA 2002 Sch.29 para.43(5).

- (6) If a declaration of provisional entitlement ceases to have effect, in whole or in part, all necessary adjustments must be made, by assessment or otherwise.

Origin: FA 2002 Sch.29 para.43(6).

- (7) Subsection (6) applies despite any limitation on the time within which assessments or amendments may be made.

Origin: FA 2002 Sch.29 para.43(6).

52 Realisation and reacquisition [j062944]

If a company realises an asset and subsequently reacquires it, this Chapter applies as if what is reacquired were a different asset from that previously realised.

Origin: FA 2002 Sch.29 para.44.

53 Disregard of deemed realisations and reacquisitions [j062945]

- (1) This Chapter does not apply in relation to a realisation of an asset that does not actually occur but is treated as occurring, except as provided by –
 - (a) section 79 (application of roll-over relief in relation to degrouping charge), or
 - (b) section 82 (application of roll-over relief in relation to reallocated degrouping charge).

Origin: FA 2002 Sch.29 para.45(1).

- (2) Reacquisitions that do not actually occur but are treated as occurring are ignored for the purposes of this Chapter.

Origin: FA 2002 Sch.29 para.45(2).

CHAPTER 8

GROUPS OF COMPANIES: INTRODUCTION

54 Overview of Chapter 8 [j062946]

- (1) This Chapter determines for the purposes of this Part –
 - (a) whether companies form a group, and
 - (b) if they do, which is the principal company of the group.
- (2) In this Chapter references to a company apply only to –
 - (a) a company within the meaning of the Companies Act 2006 (c. 46),
 - (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 ICTA,
 - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
 - (f) a building society.

Origin: FA 2002 Sch.29 para.46(2).

- (3) In this Part “group” and “subsidiary” must be read with any necessary modifications if applied to a company formed under the law of a country outside the United Kingdom.

Origin: FA 2002 Sch.29 para.46(3).

55 General rule: a company and its 75% subsidiaries form a group [j062947]

- (1) The general rule is that—
 - (a) a company (“A”) and all its 75% subsidiaries form a group, and
 - (b) if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.

Origin: FA 2002 Sch.29 para.47(1).

- (2) A is referred to in this Chapter and in Chapter 9 as the principal company of the group.

Origin: FA 2002 Sch.29 para.47(1); drafting.

- (3) Subsection (1) is subject to the following provisions of this Chapter.

Origin: FA 2002 Sch.29 para.47(2).

56 Membership of group restricted to effective 51% subsidiaries of principal company [j062948]

- (1) 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.

Origin: FA 2002 Sch.29 para.48.

- (2) For the meaning of “effective 51% subsidiary”, see section 61.

Origin: Drafting.

57 Principal company cannot be 75% subsidiary of another company [j062949]

- (1) The general rule is that a company (“A”) is not the principal company of a group if it is itself a 75% subsidiary of another company (“B”).

Origin: FA 2002 Sch.29 para.49(1).

- (2) That rule is subject to subsection (3).

Origin: FA 2002 Sch.29 para.49(2).

- (3) A is the principal company of a group (“group C”) if—
 - (a) A and B are prevented from being members of another group by section 56,
 - (b) the requirements of sections 55 and 56 are met in relation to group C, and
 - (c) A being the principal company of group C does not enable a further company to be the principal company of a group of which A would be a member.

Origin: FA 2002 Sch.29 para.49(2).

58 Company cannot be member of more than one group [j062950ia]

- (1) A company cannot be a member of more than one group.

Origin: FA 2002 Sch.29 para.50(1).

- (2) If, apart from subsection (1), a company (“A”) would be a member of 2 or more groups, the group of which it is a member is determined by applying the rules in subsections (4) to (7) successively in that order until an answer is obtained.

Origin: FA 2002 Sch.29 para.50(2).

- (3) In those subsections the principal company of each group is referred to as its head.

Origin: FA 2002 Sch.29 para.50(3).

- (4) A is a member of the group of which it would be a member if section 56 (membership of group restricted to effective 51% subsidiaries of principal company) were applied ignoring –
- (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 (see section 62), and
 - (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 (see that section).

Origin: FA 2002 Sch.29 para.50(4).

- (5) A is a member of the group the head of which is beneficially entitled to a percentage of the profits available for distribution to A’s equity holders that is greater than the percentage of those profits to which any other head of a group is so entitled.

Origin: FA 2002 Sch.29 para.50(5).

- (6) A is a member of the group the head of which would be beneficially entitled to a percentage of any of A’s assets 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.

Origin: FA 2002 Sch.29 para.50(6).

- (7) A is a member of the group the head of which owns directly or indirectly a percentage of A’s ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group.

Origin: FA 2002 Sch.29 para.50(7).

- (8) Section 838(2) to (10) of ICTA applies for the interpretation of subsection (7) as it applies for the interpretation of section 838(1)(a) of that Act (definition of “51% subsidiary”).

Origin: FA 2002 Sch.29 para.50(7).

59 Continuity of identity of group [j062951ia]

- (1) A group of companies remains the same group of companies for the purposes of this Part so long as the same company is the principal company of the group.

Origin: FA 2002 Sch.29 para.51(1).

- (2) If the principal company of a group becomes a member of another group –

- (a) the groups are treated as the same group for the purposes of this Part, and
- (b) the question whether a company has ceased to be a member of a group must be determined accordingly.

Origin: FA 2002 Sch.29 para.51(1).

- (3) The passing of a resolution or the making of an order, or any other act, for the winding up of a company is not treated for the purposes of this Part as causing any company to cease to be a member of any group of which it is a member.

Origin: FA 2002 Sch.29 para.51(2).

60 Continuity where group includes SE [j062951a]

- (1) This section applies if the principal company of a group (“Group 1”) –
 - (a) becomes an SE as a result of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) No 2157/2001 on the Statute for a European company),
 - (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
 - (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation).

Origin: FA 2002 Sch.29 para.51A.

- (2) For the purposes of this Part –
 - (a) Group 1 and any group of which the SE is a member on formation is treated as the same, and
 - (b) the question whether or not the company has ceased to be a member of a group must be determined accordingly.

Origin: FA 2002 Sch.29 para.51A.

61 Meaning of “effective 51% subsidiary” [j062952]

- (1) For the purposes of this Part a company (“the subsidiary”) is an effective 51% subsidiary of another company (“the parent”) if, and only if, conditions A and B are met.

Origin: FA 2002 Sch.29 para.52.

- (2) Condition A is that the parent is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary (see section 62).

Origin: FA 2002 Sch.29 para.52.

- (3) Condition B is that the parent 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 (see section 62).

Origin: FA 2002 Sch.29 para.52.

62 Equity holders and profits or assets available for distribution [j062953ia]

- (1) Schedule 18 to ICTA (group relief: equity holders and profits or assets available for distribution) applies for the purposes of sections 58 and 61.

Origin: FA 2002 Sch.29 para.53(1).

- (2) In that Schedule as it applies for those purposes –
- (a) for any reference to sections 403C and 413(7) of ICTA, or either of those provisions, substitute a reference to sections 58 and 61,
 - (b) omit the words in paragraph 1(4) from “but” to the end, and
 - (c) omit paragraphs 5(3), 5B to 5F and 7(1)(b).

Origin: FA 2002 Sch.29 para.53(2).

63 Supplementary provisions [j062954]

- (1) In applying the definition of “75% subsidiary” in section 838 of ICTA for the purposes of this Chapter, any share capital of a registered industrial and provident society is treated as ordinary share capital.

Origin: FA 2002 Sch.29 para.54(1).

- (2) Section 170(12) to (14) of TCGA 1992 (application to certain statutory bodies of provisions relating to groups of companies) applies for the purposes of this Chapter as it applies for the purposes of sections 171 to 181 of TCGA 1992.

Origin: FA 2002 Sch.29 para.54(2).

CHAPTER 9

APPLICATION OF THIS PART TO GROUPS OF COMPANIES

*Transfers within a group treated as tax-neutral***64 Transfers within a group [j062955]**

- (1) A transfer of an intangible fixed asset from one company (“the transferor”) to another company (“the transferee”) is tax-neutral for the purposes of this Part if –
- (a) at the time of the transfer both companies are members of the same group,
 - (b) immediately before the transfer the asset is a chargeable intangible asset in relation to the transferor, and
 - (c) immediately after the transfer the asset is a chargeable intangible asset in relation to the transferee.

Origin: FA 2002 Sch.29 para.55(1).

- (2) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 65.

Origin: Drafting.

- (3) Schedule 28AA to ICTA (provision not at arm’s length) does not apply in relation to a transfer to which subsection (1) applies.

Origin: FA 2002 Sch.29 para.55(1A).

- (4) Subsection (1) does not apply if –
- (a) the transferor or transferee is a qualifying society within the meaning of section 461A of ICTA (incorporated friendly societies entitled to exemption from tax), or
 - (b) the transferee is a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

Origin: FA 2002 Sch.29 para.55(2).

65 Meaning of “tax-neutral” transfer [\[j0629140\]](#)

- (1) This section sets out the consequences of a transfer of an asset being “tax-neutral” for the purposes of this Part.

Origin: FA 2002 Sch.29 para.140(1).

- (2) The transfer is treated for those purposes as not involving –
- (a) any realisation of the asset by the transferor, or
 - (b) any acquisition of the asset by the transferee.

Origin: FA 2002 Sch.29 para.140(2).

- (3) The transferee is treated for those purposes –
- (a) as having held the asset at all times when it was held by the transferor, and
 - (b) as having done all such things in relation to the asset as were done by the transferor.

Origin: FA 2002 Sch.29 para.140(2).

- (4) In particular –
- (a) 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
 - (b) all such credits and debits in relation to the asset as have been brought into account for tax purposes by the transferor under this Part are treated as if they had been brought into account by the transferee.

Origin: FA 2002 Sch.29 para.140(3).

- (5) The reference in subsection (4)(a) to the cost of the asset is to the cost recognised for tax purposes.

Origin: FA 2002 Sch.29 para.140(3).

Roll-over relief under Chapter 7 (realisation and reinvestment)

66 Roll-over relief on realisation and reinvestment: application to group member [\[j062956\]](#)

- (1) This section deals with the application of Chapter 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group.

Origin: FA 2002 Sch.29 para.56(1).

- (2) Chapter 7 does not apply if the expenditure on other assets is expenditure on the acquisition of assets from another member of the same group by a tax-neutral transfer.

Origin: FA 2002 Sch.29 para.56(3).

- (3) Chapter 7 applies as if two companies (“A” and “B”) are the same person if—
- (a) the realisation of the old asset is by A,
 - (b) at the time of the realisation A is a member of a group,
 - (c) the expenditure on other assets is by B,
 - (d) B is a member of the same group as A at the time the expenditure is incurred (“the relevant time”),
 - (e) B is not a dual resident investing company at the relevant time,
 - (f) immediately after the relevant time the other assets are chargeable intangible assets in relation to B, and
 - (g) both A and B make a claim for relief under Chapter 7.

Origin: FA 2002 Sch.29 para.56(2).

- (4) Expressions used in this section that are defined for the purposes of Chapter 7 have the same meaning in this section.

Origin: FA 2002 Sch.29 para.56(4).

- (5) In particular, see section 44 for the meaning of “the old asset” and “the other assets”.

Origin: Drafting.

67 Roll-over relief on reinvestment: acquisition of group company: introduction [j062957]

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies in accordance with section 68 if—
- (a) a company (“A”) acquires a controlling interest in another company (“B”), and
 - (b) intangible fixed assets (“underlying assets”) are held by B or one or more other companies within subsection (2).

Origin: FA 2002 Sch.29 para.57(1).

- (2) A company is within this subsection if—
- (a) it was not in the same group as A before the acquisition, and
 - (b) as a result of the acquisition it is in the same group as A immediately after it.

Origin: FA 2002 Sch.29 para.57(1).

- (3) For this purpose A acquires a controlling interest in B if—
- (a) A and B are not in the same group,
 - (b) A acquires shares in B, and
 - (c) as a result of the acquisition A and B are in the same group immediately after the acquisition.

Origin: FA 2002 Sch.29 para.57(7).

- (4) A claim for relief under Chapter 7 made because of section 68 must be made jointly by A and the company or companies holding the underlying assets concerned.

Origin: FA 2002 Sch.29 para.57(6).

- (5) In this section and section 68 expressions that are defined for the purposes of Chapter 7 have the same meaning as in that Chapter.

Origin: FA 2002 Sch.29 para.57(8).

- (6) References in section 68 to “A” and “B” and “underlying assets” must be read in accordance with subsection (1).

Origin: Drafting.

68 Acquisition of group company treated as equivalent to acquisition of underlying assets [j062957a]

- (1) The expenditure by A on the acquisition is treated as expenditure on acquiring the underlying assets.

Origin: FA 2002 Sch.29 para.57(2).

- (2) The amount of the expenditure so treated is taken to be the lower of—
(a) the tax written-down value of the underlying assets immediately before the acquisition, and
(b) the amount or value of the consideration for the acquisition.

Origin: FA 2002 Sch.29 para.57(3).

- (3) The requirement in section 46(3) (that immediately after the expenditure on acquiring the assets is incurred the assets are chargeable intangible assets in relation to A) is treated as met in relation to the underlying assets if the condition in subsection (4) is met.

Origin: FA 2002 Sch.29 para.57(4).

- (4) That condition is that the underlying assets are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by A.

Origin: FA 2002 Sch.29 para.57(4).

- (5) The tax written-down value of the underlying assets in the hands of the company by which they are held is reduced by the amount available for relief (but see subsections (6) and (7)).

Origin: FA 2002 Sch.29 para.57(5).

- (6) If—
(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 which holds the underlying assets may decide how the amount available for relief is to be allocated in reducing the tax written-down values of the assets.

Origin: FA 2002 Sch.29 para.57(5).

- (7) If there are two or more such companies, they may agree between them how that amount is to be allocated.

Origin: FA 2002 Sch.29 para.57(5).

Degrouping: deemed realisation and reacquisition at market value

69 Company ceasing to be member of group (“degrouper”): general [j062958]

- (1) This section applies if –
- (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”),
 - (b) immediately before the transfer the relevant asset is a chargeable intangible asset in relation to the transferor,
 - (c) immediately after the transfer the relevant asset is a chargeable intangible asset in relation to the transferee,
 - (d) the transferee –
 - (i) is a member of the group at the time of the transfer, or
 - (ii) subsequently becomes a member of the group,
 - (e) the transferee ceases to be a member of the group during the period of 6 years after the date of the transfer, and
 - (f) when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company (see section 78(3)) also leaving the group.

Origin: FA 2002 Sch.29 para.58(1), (2).

- (2) This Part applies as if the transferee –
- (a) had realised the asset, immediately after the transfer of the relevant asset to the transferee, for its market value at that time, and
 - (b) had immediately reacquired the asset at that value.

Origin: FA 2002 Sch.29 para.58(2).

- (3) The adjustments to be made as a result of subsection (2) are that the transferee or a company to which the relevant asset has been subsequently transferred must bring the total net credit or debit into account in relation to the relevant period as if it had arisen immediately before the transferee ceased to be a member of the group.

Origin: FA 2002 Sch.29 para.58(3).

- (4) In subsection (3) “the relevant period” means the period between –
- (a) the transfer of the relevant asset to the transferee, and
 - (b) the transferee ceasing to be a member of the group.

Origin: FA 2002 Sch.29 para.58(3).

- (5) This section is subject to –
- (a) section 71 (associated companies leaving group at the same time),
 - (b) section 73 (principal company becoming member of another group: general),
 - (c) section 75 (exception: company ceasing to be member of group because of exempt distribution), and

- (d) section 76 (exception: merger carried out for genuine commercial reasons).

Origin: FA 2002 Sch.29 para.58(5).

70 Company ceasing to be member of group (“degroupping”): relevance of transferee’s trade or other purposes [j062958a]

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account because of section 69 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.58(4).

- (2) But subsection (1) does not apply if conditions A and B are met.

Origin: FA 2002 Sch.29 para.58(4).

- (3) Condition A is that immediately after the transfer the asset was held by the transferee for the purposes of a trade, business or concern within section 37, 38 or 39.

Origin: FA 2002 Sch.29 para.58(4).

- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group.

Origin: FA 2002 Sch.29 para.58(4).

- (5) If conditions A and B are met, a credit or debit brought into account because of section 69 is treated for the purposes of Chapter 6 as a non-trading credit or debit.

Origin: FA 2002 Sch.29 para.58(4).

71 Associated companies leaving group at the same time [j062959]

- (1) Section 69 does not apply in relation to a transfer between two companies if—
(a) they are associated companies (see section 78(3)), and
(b) cease to be members of a group at the same time.

Origin: FA 2002 Sch.29 para.59(1).

- (2) This subsection applies if—
(a) a company (“the transferee”) that is a member of a group of companies (“the first group”) acquires an asset from another company (“the transferor”) which is a member of that group at the time of the transfer,
(b) the transferee ceases to be a member of the first group,
(c) subsection (1) applies in relation to the transferee ceasing to be a member of the first group (so that section 69 does not apply),
(d) the transferee subsequently ceases to be a member of another group of companies (“the second group”), and
(e) there is a relevant connection between the two groups (see section 72).

Origin: FA 2002 Sch.29 para.59(2).

- (3) If subsection (2) applies, section 69 applies in relation to the transferee ceasing to be a member of the second group as if both companies had been members of the second group at the time of the transfer.

Origin: FA 2002 Sch.29 para.59(2).

- (4) This section is subject to section 76 (exception: merger carried out for genuine commercial reasons).

Origin: Drafting.

72 Groups with a relevant connection [j062959a]

- (1) For the purposes of section 71(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 –
- (a) a person within subsection (2),
 - (b) a person or persons within subsection (3), or
 - (c) a person or persons within subsection (4).

Origin: FA 2002 Sch.29 para.59(3).

- (2) A person is within this subsection if it is the company –
- (a) that is the principal company of the first group, or
 - (b) if that group no longer exists, that was its principal company when the transferee ceased to be a member of it.

Origin: FA 2002 Sch.29 para.59(3).

- (3) A person or persons are within this subsection if they –
- (a) control the company within subsection (2), or
 - (b) have had it under their control at any time in the period since the transferee ceased to be a member of the first group.

Origin: FA 2002 Sch.29 para.59(3).

- (4) A person or persons are within this subsection if they have, at any time in that period, had under their control either –
- (a) a company that would have fallen within subsection (3) if it had continued to exist, or
 - (b) a company that would have fallen within this subsection.

Origin: FA 2002 Sch.29 para.59(3).

- (5) It does not matter for the purposes of subsection (4)(b) if the company that would have fallen within subsection (4) would have done so –
- (a) by reference to a company that would have fallen within subsection (3) if it had continued to exist, or
 - (b) by reference to a company or series of companies that would have fallen within subsection (4).

Origin: FA 2002 Sch.29 para.59(3).

- (6) Section 416(2) to (6) of ICTA (meaning of control) applies for the purposes of this section as it applies for the purposes of Part 11 of that Act.

Origin: FA 2002 Sch.29 para.59(4).

- (7) But a person carrying on a business of banking is not treated for those purposes as having control of a company just because of –
- (a) having 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, or
 - (b) the consequences of having exercised such rights.

Origin: FA 2002 Sch.29 para.59(4).

- (8) References in this section to “the first group”, “the second group” and “the transferee” must be read in accordance with section 71.

Origin: Drafting.

73 Principal company becoming member of another group: general [j062960]

- (1) Section 69 does not apply if a company ceases to be a member of a group just because the principal company of the group becomes a member of another group (“the second group”).

Origin: FA 2002 Sch.29 para.60(1).

- (2) This subsection applies if –
- (a) section 69 would have applied but for subsection (1),
 - (b) after the transfer and before the end of the period of 6 years after the date of the transfer, the transferee ceases to meet 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
 - (c) at the time at which the transferee ceases to do so, the relevant asset is held by the transferee or another company in the same group.

Origin: FA 2002 Sch.29 para.60(2).

- (3) If subsection (2) applies, this Part applies as if immediately after the transfer to the transferee of the relevant asset the transferee had –
- (a) realised the asset for its market value at that time, and
 - (b) immediately reacquired the asset at that value.

Origin: FA 2002 Sch.29 para.60(2).

- (4) The adjustments to be made as a result of subsection (3) are that the transferee or a company to which the relevant asset has been subsequently transferred must bring the total net credit or debit into account in relation to the relevant period as if it had arisen immediately before the transferee ceased to meet the qualifying condition.

Origin: FA 2002 Sch.29 para.60(3).

- (5) In subsection (4) “the relevant period” means the period between –
- (a) the transfer of the relevant asset to the transferee, and
 - (b) the transferee ceasing to meet the qualifying condition.

Origin: FA 2002 Sch.29 para.60(3).

- (6) This section is subject to section 76 (exception: merger carried out for genuine commercial reasons).

Origin: FA 2002 Sch.29 para.60(5).

- (7) References in this section to “the transferee” must be read in accordance with section 69.

Origin: Drafting.

74 Principal company becoming member of another group: relevance of transferee’s trade or other purposes [j062960a]

- (1) For the purposes of Chapter 6 (how credits and debits are given effect) credits or debits brought into account because of section 73 take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.60(4).

- (2) But subsection (1) does not apply if conditions A and B are met.

Origin: FA 2002 Sch.29 para.60(4).

- (3) Condition A is that immediately after the transfer the asset was held by the transferee for the purposes of a trade, business or concern within section 37, 38 or 39.

Origin: FA 2002 Sch.29 para.60(4).

- (4) Condition B is that the transferee ceased to carry on that trade, business or concern before it ceased to meet the qualifying condition.

Origin: FA 2002 Sch.29 para.60(4).

- (5) If conditions A and B are met, a credit or debit brought into account because of section 73 is treated for the purposes of Chapter 6 as a non-trading credit or debit.

Origin: FA 2002 Sch.29 para.60(4).

- (6) References in this section to “the transferee” must be read in accordance with section 69.

Origin: Drafting.

75 Exception: company ceasing to be member of group because of exempt distribution [j062961]

- (1) Sections 69 and 73 do not apply if a company ceases to be a member of a group just because of an exempt distribution, unless subsection (2) applies.

Origin: FA 2002 Sch.29 para.61(1).

- (2) This subsection applies if there is a chargeable payment within 5 years after the making of the exempt distribution.

Origin: FA 2002 Sch.29 para.61(1).

- (3) If subsection (2) applies, all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made within the period of 3 years after the making of the chargeable payment.

Origin: FA 2002 Sch.29 para.61(2).

- (4) Those adjustments may be made despite any time limit on the making of an assessment or the amendment of a return.

Origin: FA 2002 Sch.29 para.61(2).

- (5) In this section –
“exempt distribution” means a distribution that is exempt because of section 213(2) of ICTA (distributions involving shares in 75% subsidiaries), and
“chargeable payment” has the meaning given in section 214(2) of that Act.

Origin: FA 2002 Sch.29 para.61(3).

- (6) Subsections (7) and (8) apply for determining for the purposes of this section whether one company is a 75% subsidiary of another company.

Origin: FA 2002 Sch.29 para.61(4).

- (7) The other company is 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.

Origin: FA 2002 Sch.29 para.61(4).

- (8) The other company is treated as not being the owner of any share capital that –
(a) it owns indirectly, and
(b) is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Origin: FA 2002 Sch.29 para.61(4).

76 Exception: merger carried out for genuine commercial reasons [j062962]

- (1) Sections 69 to 75 do not apply if –
(a) the transferee ceases to be a member of a group of companies (“the group”) as part of a merger,
(b) the merger is carried out for genuine commercial reasons, and
(c) the avoidance of liability to tax is not the main purpose of the merger or one of its main purposes.

Origin: FA 2002 Sch.29 para.62(1).

- (2) For this purpose a “merger” means an arrangement in respect of which conditions A to D are met.

Origin: FA 2002 Sch.29 para.62(2).

- (3) Condition A is that –
(a) as a result of the arrangement one or more companies (“the acquiring company” or “the acquiring companies”) acquire one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee,
(b) the acquiring company is not a member of the group or, as the case may be, none of the acquiring companies is such a member,
(c) not less than 25% by value of each of the interests acquired consists of a holding of ordinary share capital, and
(d) the acquisition is not with a view to the disposal of the interests.

Origin: FA 2002 Sch.29 para.62(2), (4).

- (4) Condition B is that –
- (a) as a result of the arrangement one or more members of the group acquire 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 –
 - (i) by the acquiring company or acquiring companies, or
 - (ii) by a company at least 90% of whose ordinary share capital was then beneficially owned by two or more of the acquiring companies,
 - (b) not less than 25% by value of each of the interests acquired consists of a holding of ordinary share capital,
 - (c) the remainder of the interest, or as the case may be of each of the interests, acquired consists of a holding of share capital (of any description) or debentures or both, and
 - (d) the acquisition is not with a view to the disposal of the interests.

Origin: FA 2002 Sch.29 para.62(2), (4).

- (5) Condition C is that the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (3) is substantially the same as the value or, as the case may be, the total value of the interest or interests acquired as mentioned in subsection (4).

Origin: FA 2002 Sch.29 para.62(4).

- (6) Condition D is that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (3) –
- (a) consists of, or is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in subsection (4), or
 - (b) consists partly of, and as to the balance is applied in the acquisition of, that interest or those interests.

Origin: FA 2002 Sch.29 para.62(4).

- (7) Section 77 supplements this section.

Origin: Drafting.

77 Provisions supplementing section 76 [j062962a]

- (1) In section 76 “arrangement” includes a series of arrangements.

Origin: FA 2002 Sch.29 para.62(2).

- (2) For the purposes of section 76(3) and (4) a member of a group of companies is treated as carrying on as one business the activities of that group.

Origin: FA 2002 Sch.29 para.62(3).

- (3) For the purposes of section 76(3)(c), (4)(b) and (5) the value of an interest is determined as at the date of its acquisition.

Origin: FA 2002 Sch.29 para.62(5).

- (4) For the purpose of subsection 76(6), any part of the consideration for the acquisition which is small by comparison with the total is ignored.

Origin: FA 2002 Sch.29 para.62(4).

78 Provisions supplementing sections 69 to 75 [j062964]

- (1) References in sections 69 to 75 (degrouper) 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.

Origin: FA 2002 Sch.29 para.63.

- (2) For the purposes of those sections 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.

Origin: FA 2002 Sch.29 para.64.

- (3) For the purposes of those sections and this section two or more companies are associated if, by themselves, they would form a group of companies.

Origin: FA 2002 Sch.29 para.64.

79 Application of roll-over relief in relation to degrouper charge [j062965]

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies with the modifications specified in subsections (2) to (4) if a company is treated as having realised an asset because of section 69 or 73 (degrouper).

Origin: FA 2002 Sch.29 para.65(1).

- (2) In section 45 (conditions relating to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute references to its being a chargeable intangible asset in relation to the transferor.

Origin: FA 2002 Sch.29 para.65(1).

- (3) In section 46(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute –

- (a) in a case within section 69, references to the date on which the transferee ceased to be a member of the group, and
- (b) in a case within section 73, references to the date on which the transferee ceased to meet the qualifying condition.

Origin: FA 2002 Sch.29 para.65(1).

- (4) For references in Chapter 7 to the proceeds of realisation substitute references to the amount for which the transferee is treated as having realised the asset.

Origin: FA 2002 Sch.29 para.65(1).

- (5) A reduction of that amount as a result of a claim for relief under Chapter 7 does not affect the value at which the company is treated as having reacquired the asset.

Origin: FA 2002 Sch.29 para.65(2).

- (6) In this section “the transferee” and “the transferor” have the same meaning as in section 69.

Origin: FA 2002 Sch.29 para.65(3).

Reallocation of degrouping charge within group and recovery

80 Reallocation of degrouping charge within group [j062966]

- (1) This section applies if a chargeable realisation gain (see section 32) accrues to a company (“A”) under section 69 or 73 in respect of an asset.

Origin: FA 2002 Sch.29 para.66(1).

- (2) A and a company (“B”) that was a member of the relevant group at the relevant time may jointly elect that the gain, or such part of it as may be specified in the election, must be treated as accruing to B, and not A.

Origin: FA 2002 Sch.29 para.66(3).

- (3) In a case within section 69 –
- (a) “the relevant group” is the group of which A was a member at the relevant time, and
 - (b) “the relevant time” is immediately before A ceases to be a member of the group.

Origin: FA 2002 Sch.29 para.66(2).

- (4) In a case within section 73 –
- (a) “the relevant group” is the second group (within the meaning of that section), and
 - (b) “the relevant time” is immediately before A ceases to meet the qualifying condition (within the meaning of that section).

Origin: FA 2002 Sch.29 para.66(2).

- (5) 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 B at the relevant time as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect), and
 - (b) if B is not UK resident at the relevant time, as if it had accrued in respect of an asset held for the purposes of a permanent establishment of B in the United Kingdom.

Origin: FA 2002 Sch.29 para.66(8).

- (6) Section 81 makes further provision about elections under this section.

Origin: Drafting.

- (7) Section 82 makes provision for enabling claims under Chapter 7 to be made by B.

Origin: Drafting.

- (8) In sections 81 and 82 references to “A” and “B” and “the relevant time” must be read in accordance with this section.

Origin: Drafting.

81 Further requirements about elections under section 80 [j062966a]

- (1) An election under section 80 may only be made if subsection (2) or (3) applies to B.

Origin: FA 2002 Sch.29 para.66(4).

- (2) This subsection applies if at the relevant time B was UK resident.

Origin: FA 2002 Sch.29 para.66(5).

- (3) This subsection applies if at the relevant time –

- (a) B carried on a trade in the United Kingdom through a permanent establishment, and
- (b) B was not exempt from corporation tax in respect of the income or chargeable gains of that permanent establishment because of arrangements under Part 18 of ICTA (double taxation relief).

Origin: FA 2002 Sch.29 para.66(5).

- (4) An election under section 80 may not be made if at the relevant time B was –

- (a) a qualifying society within the meaning of section 461A of ICTA (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).

Origin: FA 2002 Sch.29 para.66(6).

- (5) An election under section 80 may only be made –

- (a) by notice in writing to an officer of Revenue and Customs, and
- (b) not later than 2 years after the end of the accounting period of A in which the relevant time falls.

Origin: FA 2002 Sch.29 para.66(7).

82 Application of roll-over relief in relation to reallocated degrouping charge [j062967]

- (1) This section applies where an election has been made under section 80 for the purpose of enabling B to make a claim under Chapter 7 (roll-over relief on realisation and reinvestment).

Origin: FA 2002 Sch.29 para.67(1).

- (2) Chapter 7 applies as if the realisation of the asset treated as occurring under section 69 or 73 had been by B, and not A.

Origin: FA 2002 Sch.29 para.67(2).

- (3) The conditions in section 45 (conditions relating 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 A had made the claim.

Origin: FA 2002 Sch.29 para.67(2).

- (4) 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 A had made the claim.

Origin: FA 2002 Sch.29 para.67(2).

- (5) If the election relates to only part of the gain on the realisation of an asset treated as occurring under section 69 or 73, Chapter 7 and this section apply as if the realisation had been of a separate asset representing a corresponding part of the asset.

Origin: FA 2002 Sch.29 para.67(3).

- (6) In that case any necessary apportionments must be made accordingly.

Origin: FA 2002 Sch.29 para.67(3).

83 Recovery of degrouping charge from another group company or controlling director [j062968]

- (1) This section applies if –
- (a) a company (“A”) is liable to a degrouping charge,
 - (b) an amount of corporation tax has been assessed on A for the relevant accounting period, and
 - (c) the whole or part of that amount is unpaid at the end of the period of 6 months after the time when it became payable.

Origin: FA 2002 Sch.29 para.68(1).

- (2) An officer of Revenue and Customs may serve a notice on the persons to whom this subsection applies (see subsections (3) and (4)) requiring them to pay the lesser of –
- (a) the amount of corporation tax referable to the degrouping charge (see section 84(2)), or
 - (b) the amount that remains unpaid of the corporation tax payable for the relevant accounting period by A.

Origin: FA 2002 Sch.29 paras.68(2), 69(1).

- (3) If A was a member of a group at the relevant time, subsection (2) applies to –
- (a) a company that was at that time the principal company of the group, and
 - (b) any other company that at any time in the period of 12 months ending with the relevant time –
 - (i) was a member of that group, and
 - (ii) owned the relevant asset or any part of it.

Origin: FA 2002 Sch.29 para.68(2).

- (4) If at the relevant time A is not UK resident but carries on a trade in the United Kingdom through a permanent establishment, subsection (2) applies to any person who is a controlling director –
- (a) of A,
 - (b) of a company that has control of A,
 - (c) of a company that had control of A within the period of 12 months ending with the relevant time,
- or was such a controlling director during that period.

Origin: FA 2002 Sch.29 para.68(2).

- (5) Section 84 applies for the interpretation of this section and in that section references to “A” must be read in accordance with this section.

Origin: Drafting.

84 Interpretation of section 83 [j062968a]

- (1) For the purposes of section 83 and this section –
- “the relevant accounting period” is the accounting period in which the degrouping charge falls to be brought into account by A,
- “the relevant time” is –
- in a case within section 69, when A ceased to be a member of the group,
 - in a case within section 73, when A ceased to meet the qualifying condition (within the meaning of that section), and
 - if there has been an election under section 80, the time that would have been the relevant time under paragraph (a) or (b) had there been no such election, and
- “the relevant asset” is the asset in respect of which the degrouping charge arises.

Origin: FA 2002 Sch.29 para.68(3).

- (2) For the purposes of section 83 the amount of corporation tax referable to a degrouping charge is the difference between –
- the tax in fact payable for the relevant accounting period, and
 - the tax that would have been payable for that period in the absence of the degrouping charge.

Origin: FA 2002 Sch.29 para.68(4).

- (3) References in section 83 and this section to a degrouping charge are to –
- a credit required to be brought into account under section 69(3) or 73(4), or
 - if there has been an election under section 80, a credit required to be brought into account as a result of the election.

Origin: FA 2002 Sch.29 para.68(5).

- (4) In section 83 and this section –
- “director”, in relation to a company –
- has the meaning given by section 67(1) of ITEPA 2003 (read with section 67(2) of that Act) and
 - includes any person falling within section 417(5) of ICTA (read with section 417(6) of that Act),
- “controlling director”, in relation to a company, means a director of the company who has control of it, and
- “group” and “principal company” have the meaning that would be given by Chapter 8 if in that Chapter for references to 75% subsidiaries there were substituted references to 51% subsidiaries.

Origin: FA 2002 Sch.29 para.68(6).

- (5) In subsection (4) “control” has the meaning given by section 416(2) to (6) of ICTA.

Origin: FA 2002 Sch.29 para.68(6).

85 Recovery of degrouping charge from another group company or controlling director: procedure etc [j062969]

- (1) A notice served under section 83(2) may require the payment of the amount required to be paid by the notice within 30 days of the service of the notice.

Origin: FA 2002 Sch.29 para.69(1).

- (2) The notice must state –
- (a) the amount of the tax referable to the degrouping charge (within the meaning given in section 84(2)),
 - (b) the amount of corporation tax assessed on A for the relevant accounting period that remains unpaid,
 - (c) the date when it first became payable, and
 - (d) the amount required to be paid by the person on whom the notice is served.

Origin: FA 2002 Sch.29 para.69(2).

- (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
 - (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.

Origin: FA 2002 Sch.29 para.69(3).

- (4) A person who has paid an amount required to be paid by a notice under section 83(2) may recover the amount paid from A.

Origin: FA 2002 Sch.29 para.69(5).

- (5) Such a payment is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

Origin: FA 2002 Sch.29 para.69(6).

- (6) In this section “A” and “the relevant accounting period” have the same meaning as in section 83 (see section 83(1) and section 84(1) respectively).

Origin: Drafting.

86 Recovery of degrouping charge from another group company or controlling director: time limit [j062970]

- (1) Any notice under section 83(2) must be served before the end of the period of 3 years beginning with the date on which A’s liability to corporation tax for the relevant accounting period is finally determined.

Origin: FA 2002 Sch.29 para.70(1).

- (2) In subsection (1) “A” and “the relevant accounting period” have the same meaning as in section 83 (see section 83(1) and section 84(1) respectively).

Origin: Drafting.

- (3) If the unpaid tax is charged because of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or

return incomplete), the date mentioned in subsection (1) is the date on which the determination was made.

Origin: FA 2002 Sch.29 para.70(2).

- (4) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is the latest of—
- (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,
 - (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
 - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

Origin: FA 2002 Sch.29 para.70(3).

- (5) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is—
- (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, and
 - (b) if there is such an appeal, the date on which the appeal is finally determined.

Origin: FA 2002 Sch.29 para.70(4).

- (6) In this section—
- “self-assessment” includes a self-assessment that supersedes a determination as a result of paragraph 40 of Schedule 18 to FA 1998, and
- “discovery assessment” means an assessment under paragraph 41(1) of that Schedule.

Origin: FA 2002 Sch.29 para.70(3), (4).

Treatment of payments between group members for reliefs

87 Treatment of payments between group members for reliefs [j062971]

- (1) If a payment for group roll-over relief or for the reallocation of a degrouping charge does not exceed the amount of the relevant relief—
- (a) it is not taken into account in calculating profits or losses of either of the companies involved for corporation tax purposes, and
 - (b) it is not a distribution for any of the purposes of the Corporation Tax Acts.

Origin: FA 2002 Sch.29 para.71(1), (4).

- (2) A payment for group roll-over relief is a payment made—
- (a) in connection with a claim for relief under Chapter 7 (roll-over relief in case of realisation and reinvestment) made because of—
 - (i) section 66 (roll-over relief on realisation and reinvestment: application to group member), or

- (ii) section 68 (acquisition of group company treated as equivalent to acquisition of underlying assets),
- (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 section 66) or the tax written-down value of whose assets is reduced (in a case within section 68) as a result of the claim, and
- (d) in accordance with an agreement between those companies in connection with the claim.

Origin: FA 2002 Sch.29 para.71(2).

- (3) A payment for the reallocation of a degrouping charge is a payment made—
 - (a) in connection with an election under section 80 (reallocation of degrouping charge within group),
 - (b) by the company to which the chargeable realisation gain accrues,
 - (c) to the company to which as a result of the election the whole or part of that gain is treated as accruing, and
 - (d) in accordance with an agreement between those companies in connection with the election.

Origin: FA 2002 Sch.29 para.71(3).

- (4) In the case of a payment in connection with such a claim for relief as is mentioned in section 66(3), the amount of the relevant relief is the amount of the reduction, as a result of the claim, in the acquisition costs of the company to which the payment is made.

Origin: FA 2002 Sch.29 para.71(5).

- (5) In the case of a payment in connection with such a claim for relief as is mentioned in section 67(4), the amount of the relevant relief is 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.

Origin: FA 2002 Sch.29 para.71(5).

- (6) In the case of a payment in connection with an election under section 80, the amount of the relevant relief is the amount treated as a result of the election as accruing to the company to which the payment is made.

Origin: FA 2002 Sch.29 para.71(5).

CHAPTER 10

EXCLUDED ASSETS

Introduction

88 Overview of Chapter 10 [\[j062972\]](#)

- (1) This Chapter provides for the exclusion from this Part of certain assets.

Origin: FA 2002 Sch.29 para.72(1).

- (2) If 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.

Origin: FA 2002 Sch.29 para.72(1).

- (3) This Chapter provides for 3 kinds of exclusion—
- (a) assets within sections 89 to 95 are wholly excluded from this Part,
 - (b) assets within sections 96 to 99 are excluded from this Part except as respects royalties, and
 - (c) assets within section 100 or 101 are excluded from this Part to the extent specified in that section.

Origin: FA 2002 Sch.29 para.72(2).

- (4) If because of any of those sections an asset is excluded to the extent that—
- (a) it represents particular rights,
 - (b) it is an asset of a particular description,
 - (c) it is held for particular purposes, or
 - (d) it represents expenditure of a particular kind,
- this Part applies as if there were a separate asset representing so much of the asset as is not so excluded.

Origin: FA 2002 Sch.29 para.72(3).

- (5) The other provisions of the Corporation Tax Acts apply as if there were a separate asset representing so much of the asset as is excluded.

Origin: FA 2002 Sch.29 para.72(4).

- (6) Any apportionment necessary for the purposes of subsections (3) to (5) must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.72(5).

- (7) For further rules about the exclusion of assets from this Part, see Chapter 16 (pre-FA 2002 assets etc).

Origin: Drafting.

Assets wholly excluded from this Part

89 Non-commercial purposes etc [j062977]

This Part does not apply to an intangible fixed asset so far as it is held—

- (a) for a purpose that is not a business or other commercial purpose of the company, or
- (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

Origin: FA 2002 Sch.29 para.77.

90 Assets for which capital allowance previously made [j062973a]

- (1) This Part does not apply to an intangible asset of a company if conditions A to C are met.

Origin: FA 2002 Sch.29 para.73A(1).

- (2) Condition A is that the asset falls to be treated as an intangible asset in accounts of the company.

Origin: FA 2002 Sch.29 para.73A(2).

- (3) Condition B is that in a previous period of account the asset fell to be treated as a tangible asset in accounts of the company.

Origin: FA 2002 Sch.29 para.73A(2).

- (4) Condition C is that an allowance under Part 2 of CAA 2001 (plant and machinery allowances) was made to the company in respect of the asset on the basis that it was a tangible asset.

Origin: FA 2002 Sch.29 para.73A(2).

91 Rights over tangible assets [j062973]

This Part does not apply to an intangible fixed asset so far as it represents –

- (a) rights enjoyed by virtue of an estate, interest or right in or over land, or
- (b) rights in relation to tangible movable property.

Origin: FA 2002 Sch.29 para.73.

92 Financial assets [j062975]

- (1) This Part does not apply to financial assets.

Origin: FA 2002 Sch.29 para.75(1).

- (2) In this Part “financial asset” has the same meaning as it has for accounting purposes.

Origin: FA 2002 Sch.29 para.75(2).

- (3) In particular, “financial asset” includes –

- (a) loan relationships (see Parts 6 and 7),
- (b) derivative contracts (see Part 8),
- (c) contracts or policies of insurance or capital redemption policies, and
- (d) rights under a collective investment scheme within the meaning of FISMA 2000 (see section 235 of that Act).

Origin: FA 2002 Sch.29 para.75(3).

93 Rights in companies, trusts, etc [j062976]

- (1) This Part does not apply to an asset so far as 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.

Origin: FA 2002 Sch.29 para.76(1).

- (2) Subsection (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 Part applies.

Origin: FA 2002 Sch.29 para.76(2).

- (3) Subsection (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 Part applies.

Origin: FA 2002 Sch.29 para.76(3).

94 Assets representing production expenditure on films [j062980aa]

- (1) This Part does not apply to an intangible fixed asset held by a film production company so far as it represents production expenditure on a film to which Schedule 4 of FA 2006 (taxation of activities of film production company) applies.

Origin: FA 2002 Sch.29 para.80A(1).

- (2) In subsection (1) “film production company”, “production expenditure” and “film” have the same meaning as in Chapter 3 of Part 3 of FA 2006.

Origin: FA 2002 Sch.29 para.80A(1).

95 Oil licences [j062974]

- (1) This Part does not apply to an oil licence or an interest in an oil licence.

Origin: FA 2002 Sch.29 para.74(1).

- (2) In subsection (1) “oil licence” means a UK oil licence or a foreign oil concession.

Origin: FA 2002 Sch.29 para.74(2).

- (3) In this section –

“UK oil licence” means a licence under –

- (a) Part 1 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”),

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.

Origin: FA 2002 Sch.29 para.74(3).

- (4) In subsection (1) “interest in an oil licence” includes any entitlement under an agreement to, or to a share of, oil or the proceeds of its sale if the agreement –

- (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.

Origin: FA 2002 Sch.29 para.74(4).

- (5) In subsection (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.

Origin: FA 2002 Sch.29 para.74(5).

- (6) In this section “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 in section 1 of the 1998 Act).

Origin: FA 2002 Sch.29 para.74(6).

Assets excluded from this Part except as respects royalties

96 Mutual trade or business [j062979]

Except as respects royalties, this Part does not apply to an intangible fixed asset so far as it is held for the purposes of any mutual trade or business.

Origin: FA 2002 Sch.29 para.79(1).

97 Sound recordings [j062980b]

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company on the production or acquisition of the master version of a sound recording.

Origin: FA 2002 Sch.29 para.80B(1).

- (2) For this purpose –
- (a) “sound recording” does not include a film soundtrack,
 - (b) “master version” means master tape or master audio disc of the recording, and
 - (c) references to the master version include any rights in the master version that are held or acquired with it.

Origin: FA 2002 Sch.29 para.80B(2).

98 Master versions of films [j062980a]

- (1) Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as it represents expenditure by the company –
- (a) on the production of the original master version of a film that began principal photography before 1 January 2007, or
 - (b) on the acquisition before 1 October 2007 of such an original master version.

Origin: FA 2002 Sch.29 para.80A(2).

- (2) In this section –

- (a) “film” has the same meaning as in Chapter 3 of Part 3 of FA 2006 (see section 31 of that Act),
- (b) “original master version” means the original negative, tape or disc, and
- (c) references to the original master version of a film include –
 - (i) the original master version of the film soundtrack, if any, and
 - (ii) any rights in the original master version that are held or acquired with it.

[Origin: FA 2002 Sch.29 para.80A\(3\).](#)

99 Computer software treated as part of cost of related hardware [j062981]

Except as respects royalties, this Part does not apply to an intangible fixed asset held by a company so far as 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.

[Origin: FA 2002 Sch.29 para.81.](#)

Assets excluded from this Part to the extent specified

100 Research and development [j062982]

- (1) This section applies to an intangible fixed asset held by a company so far as it represents expenditure by the company on research and development.

[Origin: FA 2002 Sch.29 para.82\(1\).](#)

- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for –
 - (a) section 12 (receipts recognised as they accrue), and
 - (b) section 13 (receipts in respect of royalties so far as not dealt with under section 12).

[Origin: FA 2002 Sch.29 para.82\(2\).](#)

- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 23 (debit on reversal of previous accounting gain) so far as relating to credits previously brought into account under section 12 or 13.

[Origin: FA 2002 Sch.29 para.82\(2\).](#)

- (4) Chapter 4 (realisation of intangible fixed assets) applies to the asset as if its cost did not include any expenditure on research and development.

[Origin: FA 2002 Sch.29 para.82\(3\).](#)

- (5) In this section “research and development” has the meaning given by section 837A of ICTA and includes oil and gas exploration and appraisal.

[Origin: FA 2002 Sch.29 para.82\(4\).](#)

101 Election to exclude capital expenditure on software [j062983]

- (1) If a company so elects in respect of capital expenditure by the company on computer software, this section applies to an intangible fixed asset held by the company so far as it represents the expenditure.

Origin: FA 2002 Sch.29 para.83(1).

- (2) Chapter 2 (credits in respect of intangible fixed assets) does not apply to the asset, except for –
- (a) section 12 (receipts recognised as they accrue), and
 - (b) section 13 (receipts in respect of royalties so far as not dealt with under section 12).

Origin: FA 2002 Sch.29 para.83(3).

- (3) Chapter 3 (debits in respect of intangible fixed assets) does not apply to the asset, except for section 23 (debit on reversal of previous accounting gain) so far as relating to credits previously brought into account under section 12 or 13.

Origin: FA 2002 Sch.29 para.83(3).

- (4) Chapter 4 (realisation of intangible fixed assets) applies as if the cost of the asset did not include any expenditure in respect of which an election under this section has been made.

Origin: FA 2002 Sch.29 para.83(3).

- (5) A credit is required to be brought into account under this Part in respect of the asset only so far as the receipts to which the credit relates are not taken into account in computing disposal values under section 72 of CAA 2001.

Origin: FA 2002 Sch.29 para.83(3).

- (6) The references in this section and section 102 –
- (a) to capital expenditure, and
 - (b) to the time when such expenditure is incurred,
- have the same meaning as if this section were in CAA 2001.

Origin: FA 2002 Sch.29 para.83(6).

- (7) Section 102 makes further provision about elections under this section.

Origin: Drafting.

102 Further provision about elections under section 101 [j062983a]

- (1) An election under section 101 must specify the expenditure to which it relates.

Origin: FA 2002 Sch.29 para.83(4).

- (2) The election must be made not more than 2 years after the end of the accounting period in which the expenditure was incurred.

Origin: FA 2002 Sch.29 para.83(4).

- (3) The election must be made in writing to an officer of Revenue and Customs.

Origin: FA 2002 Sch.29 para.83(4).

- (4) The election is irrevocable.

Origin: FA 2002 Sch.29 para.83(5).

CHAPTER 11

TRANSFER OF BUSINESS OR TRADE

Tax-neutral transfers

103 Overview [j062984o]

- (1) This Chapter contains provisions –
 - (a) treating some transfers of assets as tax neutral transfers for the purposes of this Part (see sections 104 to 107 and 109),
 - (b) giving relief in respect of the transfer of assets to a non-UK resident company (see sections 110 to 113), and
 - (c) giving relief through Part 18 of ICTA (double taxation relief) in some cases where the Merger Directive applies (see sections 114 to 117).

Origin: Drafting.

- (2) Sections 118 to 120 deal with the genuine commercial transaction requirement (which sometimes applies for the treatment referred to in subsection (1)(a) and always applies for the relief referred to in subsection (1)(c)).

Origin: FA 2002 Sch.29 para.84(5).

- (3) For the consequences of a transfer being tax-neutral for the purposes of this Part, see section 65.

Origin: Drafting.

- (4) For the meaning of “the Merger Directive”, see section 117(1).

Origin: Drafting.

104 Company reconstruction involving transfer of business [j062984]

- (1) This section applies if –
 - (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
 - (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).

Origin: FA 2002 Sch.29 para.84(1).

- (2) Subsection (1) is subject to subsections (4) to (6).

Origin: Drafting.

- (3) If the transfer includes intangible fixed assets that –
 - (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,

the transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.84(2).

- (4) This section does not apply if the transfer is one to which section 64 (transfers within a group) applies.

Origin: FA 2002 Sch.29 para.84(3).

- (5) This section does not apply if the transferor or the transferee is –
- (a) a qualifying society within the meaning of section 461A of ICTA (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).

Origin: FA 2002 Sch.29 para.84(4).

- (6) This section only applies if the reconstruction meets the genuine commercial transaction requirement.

Origin: FA 2002 Sch.29 para.84(5).

- (7) In this section “scheme of reconstruction” –
- (a) in relation to shares or debentures issued on or after 17 April 2002, has the meaning given in Schedule 5AA to TCGA 1992, and
 - (b) in relation to shares issued before that date has the same meaning as it has in section 136 of that Act in relation to such shares.

Origin: FA 2002 Sch.29 para.84(1).

105 **Transfer of UK trade between companies resident in different EU member States [j062985]**

- (1) This section applies if –
- (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
 - (c) a claim is made under this section by the transferor and the transferee.

Origin: FA 2002 Sch.29 para.85(1).

- (2) If the transfer includes intangible fixed assets that –
- (a) are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (b) are chargeable intangible assets in relation to the transferee immediately after the transfer,

the transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.85(2).

- (3) For the purposes of this section a company is treated as resident in a member State if it is within a charge to tax under the law of the State because it is treated as resident for the purposes of the charge.

Origin: FA 2002 Sch.29 para.85(3).

- (4) For the purposes of subsection (3) a company is treated as not within a charge to tax under the law of a member State if for the purposes of any double

taxation relief arrangements to which the State is a party it falls to be treated as resident in a territory which is not within a member State.

Origin: FA 2002 Sch.29 para.85(3).

- (5) This section only applies if the transfer of the trade or part meets the genuine commercial transaction requirement.

Origin: FA 2002 Sch.29 para.85(4).

- (6) In this section –
- (a) “EU company” means a body incorporated under the law of a member State, and
 - (b) “securities” includes shares.

Origin: FA 2002 Sch.29 para.85(6).

106 Formation of SE by merger [j062985a]

- (1) This section applies if –
- (a) an SE is formed by the merger of 2 or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No 2157/2001 on the Statute for a European company,
 - (b) each merging company is resident in a member State,
 - (c) the merging companies are not all resident in the same State, and
 - (d) section 104 (company reconstruction involving transfer of business) does not apply to any qualifying transferred assets.

Origin: FA 2002 Sch.29 para.85A(1).

- (2) For the purposes of this section an asset is a qualifying transferred asset if –
- (a) it is transferred as part of the process of the merger,
 - (b) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
 - (c) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.85A(3).

- (3) A transfer of qualifying transferred assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.85A(2).

- (4) For the purposes of this section a company is treated as resident in a member State if it is within a charge to tax under the law of the State because it is treated as resident for the purposes of the charge.

Origin: FA 2002 Sch.29 para.85A(6).

- (5) For the purposes of subsection (4) a company is treated as not within a charge to tax under the law of a member State if for the purposes of any double taxation relief arrangements to which the State is a party it falls to be treated as resident in a territory which is not within a member State.

Origin: FA 2002 Sch.29 para.85A(6).

- (6) This section only applies if the formation of the SE by merger meets the genuine commercial transaction requirement.

Origin: FA 2002 Sch.29 para.85A(4).

107 Transfer of business of building society to company [j062990]

- (1) This section applies if—
- (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),
 - (b) the transfer includes intangible fixed assets,
 - (c) those assets are chargeable intangible assets in relation to the society immediately before the transfer, and
 - (d) those assets are chargeable intangible assets in relation to the successor company immediately after the transfer.

Origin: FA 2002 Sch.29 para.90(1).

- (2) The transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.90(1).

- (3) For the application of sections 69 or 73 in cases where this section applies, see section 108.

Origin: Drafting.

- (4) In that section “the successor company” has the same meaning as in this section.

Origin: Drafting.

108 Application of sections 69 and 73 where transfer within section 107 occurs [j062990a]

- (1) This section deals with the application of—
- (a) section 69 (company ceasing to be member of group (“degroupping”): general), and
 - (b) section 73 (principal company becoming member of another group: general),
- where there is a transfer within section 107.

Origin: Drafting.

- (2) If, because of the transfer, a company ceases to be a member of the same group as the building society, that event does not cause section 69 or 73 to apply as respects any asset acquired by the company from the society or any other member of the same group.

Origin: FA 2002 Sch.29 para.90(2).

- (3) If the building 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 does not cause section 69 or 73 to apply to any asset to which this subsection applies.

Origin: FA 2002 Sch.29 para.90(3).

- (4) Subsection (3) applies to –
- (a) any asset acquired by the successor company on or before the transfer from the society or any other member of that same group, or
 - (b) any asset acquired from the society or any other member of that group by a company other than the successor company that is a member of that group at the time of the transfer.

Origin: FA 2002 Sch.29 para.90(3).

- (5) If a company which is a member of the same group as the building society at the time of the transfer –
- (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
 - (b) later ceases to be a member of that group,
- section 69 applies on that later event as respects any asset to which this subsection applies that is acquired by the company otherwise than from the successor company as if it had been acquired from the successor company.

Origin: FA 2002 Sch.29 para.90(4).

- (6) Subsection (5) applies to –
- (a) any asset acquired by the company from the society when the company and the society were members of the same group, or
 - (b) any asset acquired by the company from another company which is a member of the same group at the time of the transfer, when the company, the society and the other company, were members of the same group.

Origin: FA 2002 Sch.29 para.90(5).

- (7) Subsection (5) does not apply if –
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa,
 - (b) those companies cease simultaneously to be members of the same group as the successor company, and
 - (c) those companies continue to be members of the same group as one another.

Origin: FA 2002 Sch.29 para.90(6).

109 Amalgamation of, or transfer of engagements by, certain societies [j062991]

- (1) This section applies if –
- (a) two or more societies to which this section applies amalgamate or there is a transfer of engagements from one such society to another,
 - (b) in the course of the amalgamation or transfer of engagements or as part of it intangible fixed assets are transferred from one society (“the transferor”) to another (“the transferee”),
 - (c) those assets are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (d) those assets are chargeable intangible assets in relation to the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.91(1).

- (2) The transfer of those assets is tax-neutral for the purposes of this Part.

Origin: FA 2002 Sch.29 para.91(1).

- (3) This section applies to—
- (a) a building society,
 - (b) a registered industrial and provident society, and
 - (c) a co-operative association in relation to which section 486(1) and (8) of ICTA has effect as it has effect in relation to a registered industrial and provident society.

Origin: FA 2002 Sch.29 para.91(2).

Reliefs for transfers with foreign element

110 Claims to postpone charge on transfer of assets to non-resident company
[j062986]

- (1) This section applies if—
- (a) a UK resident company carrying on a trade outside the United Kingdom through a permanent establishment (“the transferor”) transfers that trade or part of it to a non-UK resident company (“the transferee”),
 - (b) the transfer meets conditions A to C,
 - (c) the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer (“relevant assets”), and
 - (d) the transferor makes a claim under this section.

Origin: FA 2002 Sch.29 para.86(1), (2).

- (2) If this section applies, this Part applies in accordance with sections 111 to 113.

Origin: FA 2002 Sch.29 para.86(2).

- (3) Condition A is that the transfer includes—
- (a) the whole assets of the transferor used for the purposes of the trade or part, or
 - (b) the whole of those assets other than cash.

Origin: FA 2002 Sch.29 para.86(1).

- (4) Condition B is that the transfer is wholly or partly in exchange for securities consisting of—
- (a) shares within subsection (5) that are issued by the transferee to the transferor, or
 - (b) such shares and loan stock that is so issued.

Origin: FA 2002 Sch.29 para.86(1).

- (5) Shares are within this subsection if they—
- (a) amount in all to not less than one quarter of the ordinary share capital of the transferee, or
 - (b) do so if taken together with any other shares in the transferee already held by the transferor.

Origin: FA 2002 Sch.29 para.86(1).

- (6) Condition C is that the transfer meets the genuine commercial transaction requirement.

Origin: FA 2002 Sch.29 para.86(8).

- (7) No claim may be made under this section if a claim is made in relation to the transfer under section 114 (transfers of non-UK trade in Mergers Directive cases (general): conditions for double taxation relief).

Origin: FA 2002 Sch.29 para.86(10).

- (8) In sections 111 to 113 “transferor”, “transferee” and “relevant assets” have the same meaning as in this section.

Origin: Drafting.

111 Transfer of assets to non-resident company: relief on transfer [j062986a]

- (1) If the proceeds of realisation of a relevant asset exceed the cost of the asset recognised for tax purposes, the proceeds are treated as reduced.

Origin: FA 2002 Sch.29 para.86(3).

- (2) If the securities are the whole consideration for the transfer, the reduction is by the amount of the excess.

Origin: FA 2002 Sch.29 para.86(3).

- (3) If the securities are not the whole of that consideration, the reduction is by the appropriate proportion of the excess.

Origin: FA 2002 Sch.29 para.86(3).

- (4) In subsection (3) “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.

Origin: FA 2002 Sch.29 para.86(3).

112 Transfer of assets to non-resident company: charge on subsequent realisations [j062986b]

- (1) 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 must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.

Origin: FA 2002 Sch.29 para.86(4).

- (2) In subsection (1) –
“the total deferred gain” means the sum of the amounts by which the proceeds of realisation of relevant assets were reduced under section 111(2) or (3), so far as not already taken into account under subsection (1) or (3) of this section, and
“the appropriate proportion” means the proportion that the market value of the part of the securities realised bears to the market value of the securities held immediately before the realisation.

Origin: FA 2002 Sch.29 para.86(4).

- (3) If at any time within 6 years after the transfer the transferee realises any of the relevant assets held by it immediately before that time, the transferor must bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the total deferred gain.

Origin: FA 2002 Sch.29 para.86(5).

- (4) In subsection (3) –
 “the total deferred gain” has the meaning given in subsection (2), and
 “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.

Origin: FA 2002 Sch.29 para.86(5).

- (5) For the purposes of subsection (4) the deferred gain attributable to relevant assets means the sum of the amounts by which the proceeds of realisation of those assets were reduced under section 111(2) or (3).

Origin: FA 2002 Sch.29 para.86(5).

- (6) For cases where transfers are ignored for the purposes of subsection (1) or (3), see section 113.

Origin: Drafting.

113 Transfer of assets to non-resident company: exclusion from section 112 of group transfers [j062986c]

- (1) For the purposes of section 112(1), any transfer that is a disposal within section 171 of TCGA 1992 (transfers within a group) is ignored.

Origin: FA 2002 Sch.29 para.86(6).

- (2) For the purposes of section 112(3), any transfer by one member of a group (within the meaning of Chapter 8) to another is ignored.

Origin: FA 2002 Sch.29 para.86(6).

- (3) This subsection applies if –
 (a) a person (“A”) acquires securities on a transfer that is ignored under subsection (1), and
 (b) no previous transfer that was ignored under subsection (1) or (2) has occurred.

Origin: FA 2002 Sch.29 para.86(7).

- (4) If subsection (3) applies, a subsequent realisation of the securities by A is treated as a realisation by the transferor.

Origin: FA 2002 Sch.29 para.86(7).

- (5) This subsection applies if –
 (a) a person (“B”) acquires an asset on a transfer that is ignored under subsection (4), and
 (b) no previous transfer that was ignored under subsection (1) or (2) has occurred.

Origin: FA 2002 Sch.29 para.86(7).

- (6) If subsection (5) applies, a subsequent realisation of the asset by B is treated as a realisation by the transferee.

Origin: FA 2002 Sch. 29 para.86(7).

114 Transfers of non-UK trade in Mergers Directive cases (general): conditions for double taxation relief [j062987]

- (1) Relief is available under section 116 if—
- (a) an EU company that is UK resident (“the transferor”) transfers the whole or part of a trade to an EU company resident in another member State (“the transferee”),
 - (b) immediately before the transfer the trade was carried on by the transferor in a member State other than the United Kingdom (“the other member State”) through a permanent establishment,
 - (c) the transfer meets conditions A to E, and
 - (d) the transferor makes a claim under this section.

Origin: FA 2002 Sch.29 para.87(1), (2).

- (2) Condition A is that the transfer includes—
- (a) the whole assets of the transferor used for the purposes of the trade or part, or
 - (b) the whole of those assets other than cash.

Origin: FA 2002 Sch.29 para.87(1).

- (3) Condition B is that the transfer is wholly or partly in exchange for securities issued by the transferee to the transferor.

Origin: FA 2002 Sch.29 para.87(1).

- (4) Condition C is that the transfer includes intangible fixed assets—
- (a) which are chargeable intangible assets in relation to the transferor immediately before the transfer, and
 - (b) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes.

Origin: FA 2002 Sch.29 para.87A(1).

- (5) Condition D is that 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.

Origin: FA 2002 Sch.29 para.87A(2).

- (6) Condition E is that the transfer meets the genuine commercial transaction requirement.

Origin: FA 2002 Sch.29 para.87(7).

- (7) No claim may be made under this section if a claim is made under section 110 (transfer of assets to non-resident company: claim to postpone charge) in relation to the transfer.

Origin: FA 2002 Sch.29 para.87(6).

- (8) Section 117 applies for the interpretation of this section and sections 115 and 116.

Origin: Drafting.

115 Transfers of non-UK trade in Mergers Directive cases (formation of SE by merger): conditions for double taxation relief [j062987aa]

- (1) Relief is available under section 116 if –
- (a) an SE is formed by the merger of 2 or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) No 2157/2001 on the Statute for a European company,
 - (b) the formation of the SE by merger falls within subsection (2),
 - (c) in the course of the merger a UK resident company (“the transferor”) transfers the whole or part of a trade to a company resident in another member State,
 - (d) immediately before the transfer the trade was carried on by the transferor in a member State other than the United Kingdom (“the other member State”) through a permanent establishment, and
 - (e) the transfer meets conditions A to C.

Origin: FA 2002 Sch.29 para.87A(1), (5).

- (2) The formation of the SE by merger falls within this subsection if –
- (a) each merging company is resident in a member State,
 - (b) the merging companies are not all resident in the same State, and
 - (c) the genuine commercial transaction requirement is met.

Origin: FA 2002 Sch.29 para.87A(1).

- (3) Condition A is that the transfer includes the whole of the assets of the transferor used for the purposes of the trade or part.

Origin: FA 2002 Sch.29 para.87A(1).

- (4) Condition B is that the transfer includes intangible fixed assets –
- (a) which are chargeable intangible assets in relation to the transferor immediately before the transfer,
 - (b) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and
 - (c) in respect of which no claim is made under section 110.

Origin: FA 2002 Sch.29 para.87A(1).

- (5) Condition C is that 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.

Origin: FA 2002 Sch.29 para.87A(2).

116 Double taxation relief for transfer of non-UK trade in Mergers Directive cases [j062987a]

- (1) The relief under this section is that the double taxation provisions apply as if the amount of tax chargeable in respect of the transfer of the relevant intangible assets under the law of the member State where the trade was carried on

included any amount of tax that would have been chargeable but for the Mergers Directive.

Origin: FA 2002 Sch.29 paras.87(2), 87A(2).

- (2) If section 114 applies, the amount of that tax is calculated on the basis that—
 - (a) so far as permitted under that law, any losses arising on the transfer are set against any gains so arising, and
 - (b) any relief available to the company by which the transfer is made under that law has been duly claimed.

Origin: FA 2002 Sch.29 para.87(2), (3).

- (3) In this section—
 - “the double taxation provisions” means Part 18 of ICTA (double taxation relief), including any arrangements having effect because of section 788 of that Act (bilateral relief), and
 - “the relevant intangible assets” means—
 - (a) in a case where section 114 applies, the assets mentioned in section 114(5), and
 - (b) in the case where section 115 applies, the assets mentioned in section 115(5).

Origin: FA 2002 Sch.29 paras.87(1), (2), 87A(1), (2).

117 Interpretation of sections 114 to 116 [j062987b]

- (1) In sections 114 to 116—
 - “EU company” means a body incorporated under the law of a member State,
 - “the Mergers Directive” means the Directive of the Council of the European Communities dated 23 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), and
 - “securities” includes shares.

Origin: FA 2002 Sch.29 paras.87(4), 87A(3).

- (2) For the purposes of sections 114 to 116 a company is treated as resident in another member State if it is within a charge to tax under the law of the State because it is treated as resident for the purposes of the charge.

Origin: FA 2002 Sch.29 paras.87(5), 87A(4).

- (3) For the purposes of subsection (2) a company is treated as not within a charge to tax under the law of a member State if for the purposes of any double taxation relief arrangements to which the State is a party it falls to be treated as resident in a territory which is not within a member State.

Origin: FA 2002 Sch.29 para.87(5).

*Genuine commercial transaction requirements and clearances***118 The genuine commercial transaction requirement [j062988b]**

- (1) For the purposes of this Chapter, a reconstruction, a transfer or a formation of an SE meets the genuine commercial transaction requirement if it—
 - (a) is effected for genuine 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.

Origin: FA 2002 Sch.29 para.84(5), 85(4), 85A(4), 86(8), 87(7), 87A(5).

- (2) The requirements of subsection (1) are treated as met if before the reconstruction, transfer or formation—
 - (a) the appropriate applicant has applied to the Commissioners for Her Majesty’s Revenue and Customs, and
 - (b) the Commissioners have notified the appropriate applicant that they are satisfied that the requirements of that subsection will be met.

Origin: FA 2002 Sch.29 para.84(6), 85(5), 85A(5), 86(9), 87(8), 87A(6), (7).

- (3) In subsection (2) “the appropriate applicant” means—
 - (a) in the case of an application about a reconstruction falling within section 104(1)(a), the transferee,
 - (b) in the case of an application about a transfer falling within section 105(1)(a), the transferor and the transferee,
 - (c) in the case of an application about the formation of an SE falling within section 106(1), the transferee,
 - (d) in the case of an application about a transfer falling within section 110(1)(a), the transferor,
 - (e) in the case of an application about a transfer falling within section 114(1)(a), the transferor, and
 - (f) in the case of an application about the formation of an SE falling within section 115(1)(a), the transferor.

Origin: FA 2002 Sch.29 para.84(6), 85(5), 85A(5), 86(9), 87(8), 87A(6).

- (4) For the procedure on such an application, see section 119.

Origin: Drafting.

119 Procedure on application for clearance [j062988]

- (1) This section applies in relation to an application under section 118(2).
- (2) The application must be in writing and must contain particulars of the operations that are to be effected.

Origin: FA 2002 Sch.29 paras.87A(7), 88(2).

- (3) The Commissioners for Her Majesty’s Revenue and Customs may by notice require the applicant to provide further particulars for the purpose of enabling them to make their decision.

Origin: FA 2002 Sch.29 paras.87A(7), 88(3).

- (4) Such a notice may only be given within 30 days of the receipt of the application or of any further particulars previously required under subsection (3).

Origin: FA 2002 Sch.29 paras.87A(7), 88(3).

- (5) If such a notice is not complied with within 30 days or such longer period as the Commissioners for Her Majesty's Revenue and Customs may allow, they need not proceed further on the application.

Origin: FA 2002 Sch.29 paras.87A(7), 88(3).

120 Decision on application for clearance [j062988a]

- (1) The Commissioners for Her Majesty's Revenue and Customs must notify their decision on an application under section 118(2) to the applicant –
- (a) within 30 days of receiving the application, or
 - (b) if they give a notice under section 119(3), within 30 days of the notice being complied with.

Origin: FA 2002 Sch.29 para.88(4).

- (2) If the Commissioners for Her Majesty's Revenue and Customs –
- (a) notify the applicant that they are not satisfied that the requirements of section 118(1) will be met, or
 - (b) do not notify their decision to the applicant within the time required by subsection (1),

the applicant may within 30 days of the notification or of that time require them to transmit the application to the Special Commissioners, together with any notice given and further particulars provided under section 119(3).

Origin: FA 2002 Sch.29 para.88(5).

- (3) In that case any notification by the Special Commissioners has effect for the purposes of section 118(2)(b) as if it were a notification by the Commissioners for Her Majesty's Revenue and Customs.

Origin: FA 2002 Sch.29 para.88(5).

- (4) If any particulars provided under section 119 do not fully and accurately disclose all facts and considerations material for the decision –
- (a) of the Commissioners for Her Majesty's Revenue and Customs, or
 - (b) of the Special Commissioners,

any resulting notification by the Commissioners for Her Majesty's Revenue and Customs or the Special Commissioners is void.

Origin: FA 2002 Sch.29 para.88(6).

CHAPTER 12

RELATED PARTIES

*Introduction***121 Overview of Chapter 12 [j0629rel]**

- (1) This Chapter deals with the question whether a person and a company are related parties for the purposes of this Part.

Origin: Drafting.

- (2) That question is relevant, in particular, for Chapter 13 (transactions between related parties).

Origin: Drafting.

*Meaning of "related party" etc***122 Meaning of “related party” [j062995]**

- (1) This section explains when a person (“A”) is a “related party” in relation to a company (“B”) for the purposes of this Part.

Origin: FA 2002 Sch.29 para.95(1).

- (2) In a case where A is a company, A is a related party in relation to B if –
 - (a) A has control of, or holds a major interest in, B, or
 - (b) B has control of, or holds a major interest in, A.

Origin: FA 2002 Sch.29 para.95(1).

- (3) In a case where A is a company, A is a related party in relation to B if A and B are both under the control of the same person (but see subsection (4)).

Origin: FA 2002 Sch.29 para.95(1).

- (4) Subsection (3) does not apply if the person controlling both A and B is –
 - (a) the Crown,
 - (b) a Minister of the Crown or a government department,
 - (c) the Scottish Ministers,
 - (d) the National Assembly for Wales,
 - (e) a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,
 - (f) a foreign sovereign power, or
 - (g) an international organisation.

Origin: FA 2002 Sch.29 para.95(2).

- (5) A is a related party in relation to B if B is a close company and A is, or is an associate of –
 - (a) a participator in B, or
 - (b) a participator in a company that has control of, or holds a major interest in, B.

Origin: FA 2002 Sch.29 para.95(1).

- (6) In a case where A is a company, A is a related party in relation to B if B is another company in the same group.

Origin: FA 2002 Sch.29 para.95(1).

- (7) For the meaning of “control”, “major interest”, “associate” and “participator”, see sections 123, 124 and 128.

Origin: Drafting.

123 Meaning of “control” [j062996]

- (1) For the purposes of this Chapter, in relation to a company, “control” means the power of a person to secure that the company’s affairs are conducted in accordance with the person’s wishes –
- (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) as a result of powers conferred by the articles of association or other document regulating the company or any other company.

Origin: FA 2002 Sch.29 para.96(1).

- (2) Sections 125 to 127 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has control of a company.

Origin: FA 2002 Sch.29 para.96(3).

124 Meaning of “major interest” [j062996a]

- (1) For the purposes of this Chapter, a person has a “major interest” in a company if –
- (a) the person 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.

Origin: FA 2002 Sch.29 para.96(2).

- (2) The reference in subsection (1)(a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in section 123.

Origin: FA 2002 Sch.29 para.96(2).

- (3) Sections 125 to 127 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Chapter whether a person has a major interest in a company.

Origin: FA 2002 Sch.29 para.96(3).

125 Rights and powers to be taken into account: general [j062997]

- (1) This section provides for a person (“A”) to be treated as having rights and powers where A’s rights or powers are relevant in determining if a person –
- (a) has control of a company, or

(b) has a major interest in a company.

Origin: FA 2002 Sch.29 para.97(4); drafting.

- (2) A is treated as having rights and powers that A –
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.

Origin: FA 2002 Sch.29 para.97(1), (4).

- (3) A is treated as having rights and powers of other persons, so far as they are required or may be required to be exercised –
- (a) on A’s behalf,
 - (b) under A’s direction, or
 - (c) for A’s benefit.

Origin: FA 2002 Sch.29 para.97(1), (4).

- (4) A is treated as having rights and powers of a person connected with A (see section 129).

Origin: FA 2002 Sch.29 para.97(1), (4).

- (5) A is treated as having rights and powers that a person connected with A would be treated as having if that person were a person whose powers were relevant in determining if a person had control of or a major interest in a company.

Origin: FA 2002 Sch.29 para.97(1), (4).

- (6) For the purposes of subsections (3) to (5), a person is treated as having rights or powers that the person –
- (a) is entitled to acquire at a future date, or
 - (b) will, at a future date, become entitled to acquire.

Origin: FA 2002 Sch.29 para.97(3).

- (7) Subsection (3) does not apply to rights and powers conferred in relation to property of a borrower by the terms of any security relating to the borrower’s loan.

Origin: FA 2002 Sch.29 para.97(2).

126 Rights and powers to be taken into account: rights and powers held jointly [j062998]

- (1) References in this Chapter –
- (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.

Origin: FA 2002 Sch.29 para.98(1).

- (2) Subsection (1) is subject to section 127 (partnerships).

Origin: FA 2002 Sch.29 para.98(2).

127 Rights and powers to be taken into account: partnerships [j062999]

- (1) The rights and powers of a person as a member of a partnership are ignored unless the person has control of or a major interest in the partnership.

Origin: FA 2002 Sch.29 para.99(1).

- (2) Whether a person has control of or a major interest in a partnership is determined in accordance with sections 123 to 126 as in relation to a company.

Origin: FA 2002 Sch.29 para.99(2).

- (3) For the purposes of subsection (2), references in those sections to any other company must be read as including any other partnership.

Origin: FA 2002 Sch.29 para.99(2).

128 Meaning of “participator” and “associate” [j0629100]

- (1) In this Chapter “participator”, in relation to a close company, has the meaning it has for the purposes of Part 11 of ICTA (close companies) (see section 417(1) of that Act), except as provided in subsection (2).

Origin: FA 2002 Sch.29 para.100(1).

- (2) “Participator” does not include a person just because the person is a loan creditor of the company within the meaning of that Part (see section 417(7) to (9) of ICTA).

Origin: FA 2002 Sch.29 para.100(1).

- (3) In this Chapter “associate”, in relation to a participator in a close company, has the meaning given by section 417(3) of ICTA.

Origin: FA 2002 Sch.29 para.100(2).

129 Connected persons: introduction [j0629101]

- (1) Section 130 explains what is meant in this Chapter when a person is referred to as being connected with another person.

Origin: FA 2002 Sch.29 para.101(1).

- (2) If that section provides that one person (“A”) is connected with another person (“B”), B is connected with A too.

Origin: FA 2002 Sch.29 para.101(1).

- (3) In that section—
“relative” means brother, sister, ancestor or lineal descendant, and
“settlement” and “settlor” have the same meaning as in Chapter 5 of Part 5 of ITTOIA (see section 620 of that Act).

Origin: FA 2002 Sch.29 para.101(2), (3).

130 Who are connected persons [j0629101a]

- (1) An individual (“A”) is connected with another individual (“B”) if—
 - (a) A is B’s spouse or civil partner,

- (b) A is a relative of B,
- (c) A is the spouse or civil partner of a relative of B,
- (d) A is a relative of B's spouse or civil partner, or
- (e) A is the spouse or civil partner of a relative of B's spouse or civil partner.

Origin: FA 2002 Sch.29 para.101(2).

- (2) A person in the capacity of a trustee of a settlement is connected with—
 - (a) any individual who is a settlor in relation to the settlement,
 - (b) any person connected with such an individual, and
 - (c) any body corporate that is connected with the settlement.

Origin: FA 2002 Sch.29 para.101(3).

- (3) For the purposes of subsection (2) a body corporate is connected with a settlement if—
 - (a) it is a close company (or not a close company only because it is not UK resident) and the participators include the trustees of the settlement, or
 - (b) it is controlled by a company within paragraph (a).

Origin: FA 2002 Sch.29 para.101(4).

- (4) A person is connected with a company if they are related parties because of section 122(2) or (3).

Origin: FA 2002 Sch.29 para.101(5).

- (5) For the purposes of subsection (4) and for the purposes of section 122 as it applies for the purposes of subsection (4)—
 - (a) “company” includes any body corporate or unincorporated association, but does not include a partnership, and
 - (b) a unit trust scheme is treated as if it were a company and as if the rights of the unit holders were shares in the company.

Origin: FA 2002 Sch.29 para.101(6).

CHAPTER 13

TRANSACTIONS BETWEEN RELATED PARTIES

Introduction

131 Overview of Chapter 13 [j062992ab]

- (1) This Chapter sets out special rules relating to transactions between related parties.

Origin: Drafting.

- (2) Sections 132 to 136 are about the rule that transfers between a company and a related party are treated as being at market value.

Origin: Drafting.

- (3) Sections 137 and 138 set out other such rules.

Origin: Drafting.

- (4) See Chapter 12 for the meaning of “related parties”.

Origin: Drafting.

Transfers treated as being at market value

132 Transfer between company and related party treated as being at market value [j062992]

- (1) The basic rule is that a transfer of an intangible asset –
(a) from a company to a related party, or
(b) to a company from a related party,
is treated for all purposes of the Taxes Acts as being at market value (as respects both the company and the related party) if condition A or B is met.

Origin: FA 2002 Sch.29 para.92(1).

- (2) Condition A is that the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer.

Origin: FA 2002 Sch.29 para.92(1).

- (3) Condition B is that the asset is a chargeable intangible asset in relation to the transferee immediately after the transfer.

Origin: FA 2002 Sch.29 para.92(1).

- (4) That rule is subject to –
(a) section 133 (transfers not at arm’s length),
(b) section 134 (transfers involving other taxes),
(c) section 135 (tax-neutral transfers), and
(d) section 136 (transfers involving gifts of business assets).

Origin: FA 2002 Sch.29 para.92(1).

- (5) In subsection (1) –
“market value” means the price the asset might reasonably be expected to fetch on a sale in the open market, and
“the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

Origin: FA 2002 Sch.29 paras.92(5), 142.

133 Transfers not at arm’s length [j062992a]

- (1) Section 132 does not apply if the consideration for the transfer –
(a) falls to be adjusted for tax purposes under Schedule 28AA to ICTA (provision not at arm’s length), or
(b) falls within that Schedule without falling to be so adjusted.

Origin: FA 2002 Sch.29 para.92(2).

- (2) For the purposes of subsection (1)(b) the consideration for a transfer falls within that Schedule without falling to be adjusted under it if –
(a) the conditions in paragraph 1(1) of that Schedule are met, but

(b) the actual provision does not differ from the arm's length provision.

Origin: FA 2002 Sch.29 para.92(3).

- (3) In subsection (2) “the actual provision” and “the arm's length provision” have the same meaning as in that Schedule (see paragraph 1(1) and paragraph 1(2) and (3) of that Schedule respectively).

Origin: Drafting

134 Transfers involving other taxes [j062992c]

- (1) This section applies if –
- (a) in a case where section 132(1) applies and the asset is transferred from the company to a related party, the transfer is at less than its market value,
 - (b) in a case where that section applies and the asset is transferred to the company from the related party, the transfer is at more than its market value, and
 - (c) conditions A and B apply.

Origin: FA 2002 Sch.29 para.92(4A).

- (2) Condition A is that the related party –
- (a) is not a company, or
 - (b) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or, as the case may be, immediately before the transfer from it.

Origin: FA 2002 Sch.29 para.92(4A).

- (3) Condition B is that the transfer –
- (a) gives rise to an amount to be taken into account in calculating any person's income, profits or losses for tax purposes because of a relevant provision, or
 - (b) would do so apart from section 132(1).

Origin: FA 2002 Sch.29 para.92(4B).

- (4) If this section applies, section 132(1) does not apply in relation to the calculation referred to in subsection (3) for the purposes of any relevant provision.

Origin: FA 2002 Sch.29 para.92(4B).

- (5) In this section “relevant provision” means –
- (a) section 209 of ICTA (meaning of “distribution”), and
 - (b) Part 3 of ITEPA 2003 (employment income: earnings and benefits etc treated as earnings).

Origin: FA 2002 Sch.29 para.92(4B).

135 Tax-neutral transfers [j062992b]

- (1) Section 132 does not apply if the transfer is tax-neutral for the purposes of this Part as a result of any provision in this Part.

Origin: FA 2002 Sch.29 para.92(4).

- (2) For such provisions, see, in particular—
 - (a) section 64 (transfers within a group), and
 - (b) sections 104 to 109 (transfer of business or trade).

Origin: Drafting.

136 Transfers involving gifts of business assets [j062992d]

- (1) This section applies if—
 - (a) the asset is transferred to the company mentioned in section 132(1), and
 - (b) on a claim for relief under section 165 of TCGA 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under section 165(2)(a).

Origin: FA 2002 Sch.29 para.92(4C).

- (2) The transfer is treated for the purposes of this Part as being at market value, less the amount of the reduction.

Origin: FA 2002 Sch.29 para.92(4D).

- (3) Any necessary adjustments may be made regardless of any relevant time limits.

Origin: FA 2002 Sch.29 para.92(4D).

Other rules

137 Exclusion of roll-over relief in case of part realisation involving related party acquisition [j062993]

- (1) Chapter 7 (roll-over relief in case of realisation and reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if there is a related party acquisition as a result of, or in connection with, the part realisation.

Origin: FA 2002 Sch.29 para.93.

- (2) For this purpose there is a related party acquisition if a person who is a related party in relation to the company acquires an interest of any description—
 - (a) in the intangible fixed asset, or
 - (b) in an asset whose value is derived in whole or in part from that asset.

Origin: FA 2002 Sch.29 para.93.

138 Delayed payment of royalty by company to related party [j062994]

- (1) This section applies if—
 - (a) a royalty is payable by a company to or for the benefit of a related party,
 - (b) the royalty is not paid in full within the period of 12 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
 - (c) credits representing the full amount of the royalty are not brought into account under this Part in any accounting period by the person to whom it is payable.

Origin: FA 2002 Sch.29 para.94(1), (2).

- (2) The royalty is brought into account for the purposes of this Part only when it is paid.

Origin: FA 2002 Sch.29 para.94(2).

CHAPTER 14

MISCELLANEOUS PROVISIONS

Grants and other contributions to expenditure

139 Treatment of grants and other contributions to expenditure [j0629102]

- (1) This section applies if a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.

Origin: FA 2002 Sch.29 para.102(1).

- (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 section 12 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset.

Origin: FA 2002 Sch.29 para.102(2).

- (3) This section does not apply to a grant within section 140.

Origin: FA 2002 Sch.29 para.102(3).

140 Grants to be left out of account for tax purposes [j0629103]

- (1) This section applies to the following grants ("exempt grants") –
- grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants), and
 - grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part.

Origin: FA 2002 Sch.29 para.103(1).

- (2) A gain in respect of an exempt grant to a company is ignored for the purposes of this Part, even though it is recognised in determining the company's profit or loss.

Origin: FA 2002 Sch.29 para.103(2).

- (3) This subsection applies if, as a result of an exempt grant being brought into account by the company to which it is made, there is a reduction –
- in the amount of a loss recognised in determining the company's profit or loss, or
 - in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.103(3).

- (4) If subsection (3) applies, the amount of the reduction is added back for the purposes of this Part.

Origin: FA 2002 Sch.29 para.103(3).

Finance leasing

141 Finance leasing etc [j0629104]

- (1) The Treasury may make provision by regulations as to the application of this Part in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease.

Origin: FA 2002 Sch.29 para.104(1).

- (2) Section 142 is about the provision that the regulations may make.

Origin: Drafting.

- (3) References in this section and that section to a finance lease –
 - (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.

Origin: FA 2002 Sch.29 para.104(4).

- (4) References to the finance lessor or finance lessee have a corresponding meaning.

Origin: FA 2002 Sch.29 para.104(5).

- (5) Regulations under this section may be made so as to have effect from 1 April 2002.

Origin: FA 2002 Sch.29 para.104(6).

142 Further provision about regulations under section 141 [j0629104a]

- (1) Regulations under section 141 may provide that this Part applies as if the asset were an intangible fixed asset of the finance lessor and not a financial asset, even though the asset is accounted for by the lessor as a financial asset.

Origin: FA 2002 Sch.29 para.104(2).

- (2) The regulations may provide that this Part applies 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 –

- (a) no election may be made under section 21 (writing down at fixed rate: election for fixed-rate basis) in respect of that amount, and
- (b) that amount is not to be treated as capitalised expenditure for the purposes of section 46(2) (roll-over relief in case of realisation and reinvestment: conditions to be met in relation to expenditure on other assets).

Origin: FA 2002 Sch.29 para.104(2).

- (3) The regulations may provide that if an asset formerly recognised by the lessor for accounting purposes as an intangible fixed asset becomes subject to a

finance lease (and so 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.

Origin: FA 2002 Sch.29 para.104(2).

- (4) The regulations may provide that assets partially excluded from this Part by sections 96 to 99 (assets excluded except as regards royalties) are entirely excluded from this Part as respects the finance lessor if they –
- (a) are subject to a finance lease, and
 - (b) are accounted for by the lessor as financial assets.

Origin: FA 2002 Sch.29 para.104(2).

- (5) The regulations may provide for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which the finance lessor is liable to income tax.

Origin: FA 2002 Sch.29 para.104(2).

- (6) The regulations may provide that an intangible asset counts as a pre-FA 2002 asset in the hands of the finance lessor if the finance lessee is –
- (a) a company for which the asset was the whole or part of a pre-FA 2002 asset, or
 - (b) a person who is a related party in relation to such a company.

Origin: FA 2002 Sch.29 para.104(2).

- (7) The regulations may make such consequential, supplementary, incidental or transitional provision or savings as the Treasury considers appropriate.

Origin: FA 2002 Sch.29 para.104(3).

- (8) That provision may include modifications of the operation of other provisions of the Corporation Tax Acts.

Origin: FA 2002 Sch.29 para.104(3).

Values to be used in special cases

143 Assets acquired or realised together [j0629105]

- (1) Any reference in this Part to the acquisition or realisation of an asset includes a reference to the acquisition or realisation of that asset together with other assets.

Origin: FA 2002 Sch.29 para.105(1).

- (2) For the purposes of this Part assets acquired or realised as a result of one bargain are treated as acquired or realised together even though –
- (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.

Origin: FA 2002 Sch.29 para.105(2).

- (3) If assets are acquired together, any values allocated to particular assets by the company in accordance with generally accepted accounting practice must be accepted for the purposes of this Part.

Origin: FA 2002 Sch.29 para.105(3).

- (4) If no such values are so allocated, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as referable to that asset.

Origin: FA 2002 Sch.29 para.105(3).

- (5) If assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset is treated for the purposes of this Part as proceeds of the realisation of that asset.

Origin: FA 2002 Sch.29 para.105(4).

144 Deemed market value acquisition: adjustment of amounts in case of nil accounting value [j0629106]

- (1) This section applies if—
- (a) a company is treated for the purposes of this Part as acquiring an asset at market value, but
 - (b) the accounting value of the asset transferred is nil in the hands of the transferee.

Origin: FA 2002 Sch.29 para.106(1).

- (2) In such a case any reference in this Part to—
- (a) the cost of the asset recognised for accounting purposes,
 - (b) the accounting value of the asset, or
 - (c) any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,

is a reference to the cost, value or loss that would have been recognised if the asset had been acquired at market value.

Origin: FA 2002 Sch.29 para.106(2).

- (3) If the asset is revalued, the revaluation is ignored.

Origin: FA 2002 Sch.29 para.106(2).

- (4) In this section “revaluation” has the same meaning as in section 14 (see subsection (5) of that section) and “revalued” must be read accordingly.

Origin: FA 2002 Sch.29 para.106(2).

Fungible assets

145 Fungible assets [j0629107]

- (1) For the purposes of this Part—
- (a) fungible assets of the same kind that are held by the same person in the same capacity are treated as indistinguishable parts of a single asset,
 - (b) that asset is treated as growing as additional assets of the same kind are created or acquired, and

(c) that asset is treated as diminishing as some of the assets are realised.

Origin: FA 2002 Sch.29 para.107(1).

(2) In this Part “fungible assets” means assets of a nature to be dealt in without identifying the particular assets involved.

Origin: FA 2002 Sch.29 para.107(2).

Assets ceasing to be or becoming chargeable intangible assets

146 Asset ceasing to be chargeable intangible asset: deemed realisation at market value [j0629108]

- (1) If an asset ceases to be a chargeable intangible asset in relation to a company in any of the circumstances specified in subsection (2), this Part applies as if –
- (a) immediately before the asset ceased to be a chargeable intangible asset in relation to the company, the company had realised the asset for its market value at that time, and
 - (b) the company had immediately reacquired it at that value.

Origin: FA 2002 Sch.29 para.108(1).

- (2) The circumstances are –
- (a) that the company ceases to be UK resident,
 - (b) in the case of a company that is not UK resident, any circumstances not involving the realisation of the asset by the company, and
 - (c) that the asset begins to be held for the purposes of a mutual trade or business.

Origin: FA 2002 Sch.29 para.108(1).

(3) Subsection (1) is subject to section 147.

Origin: FA 2002 Sch.29 para.108(2).

147 Asset ceasing to be chargeable intangible asset: postponement of gain [j0629109]

- (1) This subsection applies if –
- (a) section 146 applies because a company (“A”) ceases to be UK resident,
 - (b) immediately before A ceases to be UK resident the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a permanent establishment,
 - (c) the proceeds of the realisation of the asset that is treated as occurring under section 146 exceed the original cost of the asset recognised for tax purposes,
 - (d) immediately after A ceases to be UK resident it is a 75% subsidiary of another company (“B”) that is UK resident, and
 - (e) A and B so elect by notice given to an officer of Revenue and Customs not later than 2 years after the date on which A ceased to be UK resident.

Origin: FA 2002 Sch.29 para.109(1).

- (2) If subsection (1) applies, this Part applies as if the proceeds of the realisation of the asset that is treated as occurring under section 146 were reduced to the original cost of the asset recognised for tax purposes.

Origin: FA 2002 Sch.29 para.109(1).

- (3) For the later treatment of the amount of the reduction under subsection (2), see sections 148 and 149.

Origin: Drafting.

- (4) In those sections –
(a) “the postponed gain” means the amount of that reduction, and
(b) references to “A” and “B” must be read in accordance with this section.

Origin: Drafting.

148 Treatment of postponed gain on subsequent realisation [j0629109a]

- (1) This section applies if A realises the asset to which section 147 applies before the end of the period of 6 years after the date on which it ceases to be UK resident.

Origin: FA 2002 Sch.29 para.109(2).

- (2) B must bring into account for tax purposes –
(a) a credit equal to the postponed gain, or
(b) in the case of a part realisation, the appropriate proportion of the postponed gain.

Origin: FA 2002 Sch.29 para.109(2).

- (3) The appropriate proportion is –

$$\frac{MVB - MVA}{MVB}$$

where –

MVB is the market value of the asset immediately before the part realisation, and

MVA is the market value of the asset immediately after the part realisation.

Origin: FA 2002 Sch.29 para.109(2).

- (4) Subsection (2) does not apply –
(a) so far as 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 section 149.

Origin: FA 2002 Sch.29 para.109(3).

- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

Origin: FA 2002 Sch.29 para.109(6).

149 Treatment of postponed gain in other cases [j0629109aa]

- (1) This section applies if at any time after A ceases to be UK resident –
 - (a) A ceases to be a 75% subsidiary of B on the disposal by B of ordinary shares of A,
 - (b) A ceases to be such a subsidiary otherwise than on such a disposal and later B disposes of such shares, or
 - (c) B ceases to be UK resident.

Origin: FA 2002 Sch.29 para.109(4).

- (2) B must bring into account for tax purposes a credit equal to the postponed gain.

Origin: FA 2002 Sch.29 para.109(4).

- (3) Subsection (2) does not apply so far as the postponed gain has already been brought into account under section 148.

Origin: FA 2002 Sch.29 para.109(4).

- (4) Any credit falling to be brought into account under subsection (2) because B ceases to be UK resident must be brought into account immediately before it does so.

Origin: FA 2002 Sch.29 para.109(5).

- (5) A credit brought into account by B under this section is treated as a non-trading credit for the purposes of Chapter 6 (how credits and debits are given effect).

Origin: FA 2002 Sch.29 para.109(6).

150 Asset becoming chargeable intangible asset [j0629110]

- (1) This section applies if an asset becomes a chargeable intangible asset in relation to a company –
 - (a) on the company becoming UK resident,
 - (b) in the case of a company that is not UK resident, on the asset beginning to be held for the purposes of a trade carried on by the company in the United Kingdom through a permanent establishment, or
 - (c) on the asset ceasing to be held for the purposes of a mutual trade or business.

Origin: FA 2002 Sch.29 para.110(1).

- (2) This Part applies as if –
 - (a) the company had acquired the asset immediately after it became a chargeable intangible asset in relation to the company, and
 - (b) had done so for its accounting value at that time.

Origin: FA 2002 Sch.29 para.110(2).

Matters to be ignored

151 Tax avoidance arrangements to be ignored [j0629111]

- (1) The question whether a credit or a debit is to be brought into account under this Part and, if so, its amount is determined as if any tax avoidance arrangements had not taken place.

Origin: FA 2002 Sch.29 para.111(1).

- (2) Arrangements are “tax avoidance arrangements” for this purpose if their main object or one of their main objects is to enable a company –
 - (a) to obtain a debit under this Part to which it would not otherwise be entitled,
 - (b) to obtain a debit under this Part which exceeds that to which it would otherwise be entitled,
 - (c) to avoid having to bring a credit into account under this Part, or
 - (d) to reduce the amount of any such credit.

Origin: FA 2002 Sch.29 para.111(2).

- (3) In this section –
 - “arrangements” includes any scheme, agreement or understanding, whether or not it is legally enforceable, and
 - “brought into account” means brought into account for tax purposes.

Origin: FA 2002 Sch.29 para.111(3).

152 Debits not allowed in respect of expenditure not generally deductible for tax purposes [j0629112]

- (1) No debit may be brought into account for tax purposes under this Part in respect of expenditure that is not generally deductible for tax purposes.

Origin: FA 2002 Sch.29 para.112(1).

- (2) Expenditure is “not generally deductible for tax purposes” so far as revenue expenditure of that description incurred for the purposes of a trade would be non-deductible because of a provision specified in subsection (3).

Origin: FA 2002 Sch.29 para.112(2).

- (3) Those provisions are –
 - (a) section {j031301} (business entertainment and gifts: general rule),
 - (b) section {j031401} (car or motor cycle hire),
 - (c) section {j032001} (crime-related payments), and
 - (d) section 246(2) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).

Origin: FA 2002 Sch.29 para.112(2).

Delayed payments and bad debts

153 Delayed payment of employees’ remuneration [j0629113]

- (1) This subsection applies if –

- (a) a loss in respect of employees' remuneration is recognised by a company for accounting purposes, and
- (b) apart from this section, a debit in respect of the remuneration could be brought into account for the purposes of this Part for the period of account in which the loss is recognised.

Origin: FA 2002 Sch.29 para.113(1).

- (2) No such debit may be so brought into account unless the remuneration is paid before the end of the period of 9 months beginning with the end of the period of account.

Origin: FA 2002 Sch.29 para.113(1).

- (3) If the remuneration is paid after the end of the 9 month period, the debit may be brought into account for the purposes of this Part for the period of account in which it is paid.

Origin: FA 2002 Sch.29 para.113(1).

- (4) Section 154 makes further provision relating to the application of this section.

Origin: Drafting.

154 Delayed payment of employees' remuneration: supplemental provisions **[j0629113a]**

- (1) For the purposes of section 153 a loss in respect of employees' remuneration recognised for accounting purposes includes an amount reserved in the accounts of an employer with a view to it becoming employees' remuneration.

Origin: FA 2002 Sch.29 para.113(3).

- (2) For the purposes of section 153 it does not matter if the loss is in respect of –
 - (a) particular employments, or
 - (b) employments generally.

Origin: FA 2002 Sch.29 para.113(2).

- (3) Any adjustment required by section 153 of an accounting loss that is partly referable to an amount to which that section applies and partly to other matters must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.113(4).

- (4) In making a calculation for tax purposes that has to be made before the end of the 9 month period mentioned in section 153(2), it must be assumed that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period.

Origin: FA 2002 Sch.29 para.113(5).

- (5) But if the remuneration is subsequently paid before the end of the period, nothing in subsection (4) prevents the calculation being revised and any tax return being amended accordingly.

Origin: FA 2002 Sch.29 para.113(5); Annex 1, Change [jc022].

- (6) For the purposes of section 153 and this section, remuneration is paid when it –

- (a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
- (b) would be so treated if it were not exempt income.

Origin: FA 2002 Sch.29 para.113(6).

- (7) In section 153 and this section –
- “employee” includes an office-holder and so “employment” includes an office, and
 - “remuneration” means an amount which is or is treated as earnings for the purposes of ITEPA 2003.

Origin: FA 2002 Sch.29 para.113(7).

155 Delayed payment of pension contributions [j0629114]

- (1) This section applies if –
- (a) a loss 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 loss is recognised.

Origin: FA 2002 Sch.29 para.114(1).

- (2) The contributions may be brought into account for the purposes of this Part only when they are paid.

Origin: FA 2002 Sch.29 para.114(2).

- (3) For the purposes of this section “pension contributions” means –
- (a) sums paid by an employer by way of contributions under a registered pension scheme,
 - (b) sums paid to the trustees or managers of such a scheme that are treated as if they were the payment of contributions under the pension scheme (see section 199 of FA 2004), or
 - (c) expenses within section 246(3) of FA 2004 (expenditure on benefits under employer-financed retirement benefits schemes).

Origin: FA 2002 Sch.29 para.114(3).

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

Origin: FA 2002 Sch.29 para.114(4).

156 Bad debts etc [j0629115]

- (1) No debit may be brought into account for the purposes of this Part in respect of a debt owed to the company, except –
- (a) by way of impairment loss, or
 - (b) so far as the debt is released as part of a statutory insolvency arrangement.

Origin: FA 2002 Sch.29 para.115(1).

- (2) If a debt is so released, any gain in respect of the release that is brought into account for accounting purposes by the debtor is disregarded for the purposes of this Part.

Origin: FA 2002 Sch.29 para.115(3).

- (3) 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 section 12 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset.

Origin: FA 2002 Sch.29 para.115(4).

- (4) Any adjustment required by this section of an accounting gain or loss that is partly referable to an amount affected by this section and partly to other matters must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.115(5).

- (5) In this section “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

Origin: FA 2002 Sch.29 para.115(6).

Controlled foreign companies

157 Assumptions for calculating chargeable profits of controlled foreign companies [j0629116]

- (1) In calculating the amount mentioned in section 747(6) of ICTA (chargeable profits of controlled foreign company), make the following assumptions when applying this Part.

Origin: FA 2002 Sch.29 para.116(1).

- (2) Assume that any intangible fixed asset acquired or created by the company before the beginning of the first relevant accounting 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.

Origin: FA 2002 Sch.29 para.116(2).

- (3) The “first relevant accounting period” is the first accounting period –
- (a) in respect of which an apportionment under section 747(3) of ICTA falls to be made, or
 - (b) which is an ADP exempt period.

Origin: FA 2002 Sch.29 para.116(2).

- (4) Ignore section 4(1) of Schedule 24 to ICTA (assumption that all available reliefs have been claimed) and assume that the company –
- (a) has not claimed any relief under Chapter 7 (roll-over relief in case of reinvestment), or
 - (b) made any provisional declaration of entitlement to such relief.

Origin: FA 2002 Sch.29 para.116(3).

- (5) But if notice is given in accordance with section 4(2) of Schedule 24 to ICTA requesting that subsection (4) should not apply, it does not apply to such claims as are specified in the notice to the extent so specified.

Origin: FA 2002 Sch.29 para.116(3).

- (6) Expressions used in this section that are defined for the purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies) have the same meaning in this section (see, in particular, paragraph 1(6) of Schedule 24 to that Act for the meaning of “ADP exempt period”).

Origin: FA 2002 Sch.29 para.116(4).

- (7) The assumption in subsection (2) does not affect the determination of the question whether this Part applies to an asset in accordance with section 168 (application of this Part to assets created or acquired on or after 1 April 2002).

Origin: FA 2002 Sch.29 para.116(5).

CHAPTER 15

ADJUSTMENTS ON CHANGE OF ACCOUNTING POLICY

158 Introduction [j0629116A]

- (1) This Chapter applies if—
- there is a change of accounting policy in drawing up a company’s accounts from one period of account to the next, and
 - the approach in each of those periods accords with the law and practice applicable in relation to that period.

Origin: FA 2002 Sch.29 para.116A(1).

- (2) In this Chapter—
- the first of those periods of account is referred to as “the earlier period”, and
 - the next is referred to as “the later period”.

Origin: FA 2002 Sch.29 para.116A(1).

- (3) This Chapter applies, in particular, if—
- the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
 - the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

Origin: FA 2002 Sch.29 para.116A(2).

159 Change of accounting policy involving change of value [j0629116B]

- (1) This section and section 160 apply if—
- as a result of the change of accounting policy there is a difference (“the accounting difference”) between—

- (i) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
 - (ii) the accounting value of that asset at the beginning of the later period, and
- (b) no election has been made in respect of the asset under section 21 (writing down at fixed rate: election for fixed-rate basis).

Origin: FA 2002 Sch.29 para.116B(1), (3), (6).

- (2) If there is an increase in that value, a corresponding credit must be brought into account for tax purposes in the later period.

Origin: FA 2002 Sch.29 para.116B(1).

- (3) If there is a decrease in that value, a corresponding debit must be brought into account for tax purposes in the later period.

Origin: FA 2002 Sch.29 para.116B(1).

- (4) The amount of the credit or debit is –

$$D \times \frac{WDVE}{AVE}$$

where –

D is the accounting difference,

WDVE is the tax written-down value of the asset at the end of the earlier period, and

AVE is the accounting value of the asset at the end of the earlier period.

Origin: FA 2002 Sch.29 para.116B(3).

- (5) But if subsection (2) applies, the credit must not exceed –
- (a) the sum of debits brought into account for tax purposes in respect of the asset before the later period, less
 - (b) the sum of the credits so brought into account.

Origin: FA 2002 Sch.29 para.116F(1), (2).

- (6) This section is subject to section 165 (exclusion of credits or debits brought into account under other provisions).

Origin: FA 2002 Sch.29 para.116B(7).

160 Effect of application of section 159 in later period and subsequently [j0629116BB]

- (1) A credit or debit that is required to be brought into account under section 159 is treated as arising at the beginning of the later period (“the relevant time”).

Origin: FA 2002 Sch.29 para.116B(2)

- (2) If a credit is to be brought into account, the tax written-down value of the asset at the relevant time is the sum of –
- (a) the tax written-down value of the asset at the end of the earlier period, and
 - (b) the credit.

Origin: FA 2002 Sch.29 para.116B(4).

- (3) If a debit is to be brought into account, the tax written-down value of the asset at the relevant time is –
- (a) the tax written-down value of the asset at the end of the earlier period, less
 - (b) the debit.

Origin: FA 2002 Sch.29 para.116B(4).

- (4) After the relevant time the cost recognised for tax purposes is the sum of –
- (a) the tax written-down value given by subsection (2) or (3), and
 - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.116B(5).

- (5) After the relevant time the tax written-down value is determined taking account only of subsequent credits and debits.

Origin: FA 2002 Sch.29 para.116B(5).

161 Change of accounting policy involving disaggregation [j0629116C]

- (1) This section and section 162 apply if –
- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period,
 - (b) there is a difference (“the accounting difference”) between –
 - (i) the accounting value of the original asset at the end of the earlier period, and
 - (ii) the sum of the accounting values of the resulting assets at the beginning of the later period,
 - (c) no election under section 21 (election for writing down at fixed rate) has been or is subsequently made in respect of the original asset), and
 - (d) no such election is subsequently made in respect of any of the resulting assets.

Origin: FA 2002 Sch.29 para.116C(1), (2), (7).

- (2) If the accounting difference is an increase, a corresponding credit must be brought into account for tax purposes in the later period.

Origin: FA 2002 Sch.29 para.116C(2).

- (3) If the accounting difference is a decrease, a corresponding debit must be brought into account for tax purposes in the later period.

Origin: FA 2002 Sch.29 para.116C(2).

- (4) The credit or debit is –

$$D \times \frac{WDVE}{AVE}$$

where –

D is the accounting difference,

WDVE is the tax written-down value of the original asset at the end of the earlier period, and

AVE is the accounting value of that asset at the end of that period.

Origin: FA 2002 Sch.29 para.116C(4).

- (5) But if subsection (2) applies the credit must not exceed –
- (a) the sum of the debits brought into account for tax purposes in respect of the original asset before the later period, less
 - (b) the sum of the credits so brought into account.

Origin: FA 2002 Sch.29 para.116F(1), (3).

- (6) This section is subject to section 165 (exclusion of credits or debits brought into account under other provisions).

Origin: FA 2002 Sch.29 para.116C(8).

162 Effect of application of section 161 in later period and subsequently [j0629116CC]

- (1) A credit or debit that is required to be brought into account under section 161 is treated as arising at the beginning of the later period (“the relevant time”).

Origin: FA 2002 Sch.29 para.116C(3).

- (2) If section 161(2) applies, the tax written-down value of each resulting asset at the relevant time is –

$$(\text{WDVE} + \text{C}) \times \frac{\text{AV}}{\text{TAV}}$$

where –

WDVE is the tax written-down value of the original asset at the end of the earlier period,

C is the credit,

AV is the accounting value of the resulting asset in question at the relevant time, and

TAV is the sum of the accounting values of all the resulting assets at the relevant time.

Origin: FA 2002 Sch.29 para.116C(5).

- (3) If section 161(3) applies, the tax written-down value of each resulting asset at the relevant time is –

$$(\text{WDVE} - \text{D}) \times \frac{\text{AV}}{\text{TAV}}$$

where –

WDVE, AV and TAV have the same meaning as in subsection (2), and

D is the debit.

Origin: FA 2002 Sch.29 para.116C(5).

- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is taken to be the sum of –

- (a) the tax written-down value given by subsection (2) or, as the case may be, subsection (3), and
- (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.116C(6).

- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

Origin: FA 2002 Sch.29 para.116C(6).

163 Change of accounting policy involving disaggregation: original asset subject to fixed-rate writing down [j0629116D]

- (1) This section applies if –
 - (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
 - (b) an election under section 21 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the original asset.

Origin: FA 2002 Sch.29 para.116D(1).

- (2) That election has effect –
 - (a) in relation to the original asset, for periods up to and including the earlier period, and
 - (b) in relation to each of the resulting assets, for the later period and subsequent periods.

Origin: FA 2002 Sch.29 para.116D(2).

- (3) The tax written-down value of each resulting asset at the beginning of the later period (“the relevant time”) is –

$$\text{WDVE} \times \frac{\text{AVL}}{\text{TAVL}}$$

where –

WDVE is the tax written-down value of the original asset at the end of the earlier period,

AVL is the accounting value is the accounting value of the asset in question at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

Origin: FA 2002 Sch.29 para.116D(3).

- (4) After the relevant time the cost recognised for tax purposes for each resulting asset is the sum of –
 - (a) the tax written-down value given by subsection (3), and
 - (b) the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes.

Origin: FA 2002 Sch.29 para.116D(4).

- (5) After the relevant time the tax written-down value for each resulting asset is determined taking account only of subsequent credits and debits.

Origin: FA 2002 Sch.29 para.116D(4).

164 Change of accounting policy involving disaggregation: election for fixed-rate writing down in relation to resulting asset [j0629116E]

- (1) This section applies if –
- the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the real original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
 - no election under section 21 (writing down at fixed rate: election for fixed-rate basis) has been or is subsequently made in respect of the real original asset.

Origin: FA 2002 Sch.29 para.116E(1).

- (2) An election under that section may be made in respect of any of the resulting assets.

Origin: FA 2002 Sch.29 para.116E(2).

- (3) But such an election may only be made within the period during which such an election could have been made in relation to the real original asset.

Origin: FA 2002 Sch.29 para.116E(2).

- (4) The effect of the election is that –
- the real original asset is treated as if it had at all material times consisted of as many assets (“notional original assets”) as there are resulting assets,
 - each notional original asset is taken to be the same asset as one of the resulting assets (its “corresponding resulting asset”),
 - the appropriate proportion of every amount falling to be taken into account in relation to the real original asset is attributed to each of the notional original assets, and
 - this Part applies in relation to each of the notional original assets and its corresponding resulting asset accordingly.

Origin: FA 2002 Sch.29 para.116E(3).

- (5) For the purposes of subsection (4)(c) the appropriate proportion of every amount falling to be taken into account in relation to the real original asset that is to be attributed to each notional original asset is found by reference to the notional original asset’s corresponding resulting asset.

Origin: FA 2002 Sch.29 para.116E(3).

- (6) The appropriate proportion in relation to each resulting asset is –

$$\frac{AVL}{TAVL}$$

where –

AVL is the accounting value of that resulting asset at the beginning of the later period, and

TAVL is the sum of the accounting values of all the resulting assets at the beginning of that period.

Origin: FA 2002 Sch.29 para.116E(4).

165 Exclusion of credits or debits brought into account under other provisions [j0629116G]

- (1) A credit or debit is not required to be brought into account under this Chapter so far as a credit or debit representing the accounting difference in question is brought into account for tax purposes under a provision specified in subsection (2).

Origin: FA 2002 Sch.29 para.116G.

- (2) Those provisions are –
 - (a) section 14 (revaluation),
 - (b) section 16 (reversal of previous accounting loss), or
 - (c) section 23 (reversal of previous accounting gain).

Origin: FA 2002 Sch.29 para.116G.

166 Subsequent events affecting asset subject to adjustment under this Chapter [j0629116H]

- (1) On a further change of accounting policy affecting an intangible fixed asset in relation to which this Chapter has applied, the previous provisions of this Chapter apply again.

Origin: FA 2002 Sch.29 para.116H(1).

- (2) On a subsequent part realisation affecting the asset in question, section 35 (effect of part realisation of asset) applies.

Origin: FA 2002 Sch.29 para.116H(2).

CHAPTER 16

PRE-FA 2002 ASSETS ETC

Introduction

167 Overview of Chapter 16 [j0629117]

- (1) This Chapter sets out a general rule disapplying this Part as respects some assets (see section 168(1): application of this Part to assets created or acquired on or after 1 April 2002).

Origin: Drafting.

- (2) Intangible fixed assets to which that general rule applies (subject to any express provision to the contrary) are referred to in this Part as “pre-FA 2002 assets”.

Origin: Drafting.

- (3) This Chapter also –
- (a) makes provision about when assets are treated as created or acquired (see sections 169 to 175),
 - (b) makes special provision about particular kinds of assets (see sections 176 to 183, and
 - (c) provides how roll-over relief is to apply in some circumstances where pre-FA 2002 assets are involved (see sections 184 and 185).

Origin: Drafting.

General rule

168 Application of this Part to assets created or acquired on or after 1 April 2002
[j0629118]

- (1) The general rule is that this Part applies only to intangible fixed assets of a company (“the company”) that –
- (a) are created by the company on or after 1 April 2002,
 - (b) are acquired by the company on or after that date 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 on or after that date in Case A, B or C from a person who at the time of the acquisition is a related party in relation to the company.

Origin: FA 2002 Sch.29 para.118(1).

- (2) For provisions explaining when assets are treated as created or acquired, see sections 169 to 175.

Origin: Drafting.

- (3) Case A is where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition.

Origin: FA 2002 Sch.29 para.118(2).

- (4) Case B is where the asset is acquired from a person (“the intermediary”) who acquired the asset on or after 1 April 2002 from a third person –
- (a) who was not at the time of the intermediary’s acquisition a related party in relation –
 - (i) to the intermediary, or
 - (ii) if the intermediary was not a company, to a company in relation to which the intermediary was a related party, and
 - (b) who is not, at the time of the acquisition by the company, a related party in relation to the company.

Origin: FA 2002 Sch.29 para.118(2).

- (5) Case C is where the asset was created on or after 1 April 2002 by the person from whom it is acquired or any other person.

Origin: FA 2002 Sch.29 para.118(2).

- (6) The general rule in subsection (1) is subject to –
- (a) section 176 (fungible assets: application of section 145),

- (b) section 178 (certain assets acquired on transfer of a business treated as pre-FA 2002 assets),
- (c) section 179 (assets whose value derives from pre-FA 2002 assets treated as pre-FA 2002 assets),
- (d) section 181 (assets acquired in connection with disposals of pre-FA 2002 assets treated as pre-FA 2002 assets),
- (e) section 183 (application of this Part to some pre-FA 2002 assets consisting of telecommunications rights), and
- (f) sections 184 and 185 (application of roll-over relief in relation to some pre-FA 2002 assets).

Origin: FA 2002 Sch.29 para.118(4), (5).

- (7) This section does not restrict the application of this Part in accordance with section 182 (application of this Part to royalties) (but see section 182(3)).

Origin: FA 2002 Sch.29 para.118(6).

When assets are treated as created or acquired

169 Assets treated as created or acquired when expenditure incurred [j0629120]

- (1) This section –
 - (a) applies for the purposes of section 168 (application of this Part to assets created or acquired on or after 1 April 2002), and
 - (b) applies to all intangible assets except those to which the provisions specified in subsection (2) apply.

Origin: FA 2002 Sch.29 para.120(1); drafting.

- (2) The provisions referred to in subsection (1)(b) are –
 - (a) section 170 (internally-generated goodwill: time of creation),
 - (b) section 171 (certain other internally-generated assets: time of creation), and
 - (c) section 172 (assets representing production expenditure on films: time of creation).

Origin: FA 2002 Sch.29 para.120(1); drafting.

- (3) An intangible asset to which this section applies is treated as created or acquired on or after 1 April 2002 so far as expenditure on its creation or acquisition is incurred on or after that date.

Origin: FA 2002 Sch.29 para.120(2).

- (4) As to whether expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002, see sections 173 to 175.

Origin: Drafting.

- (5) If only part of the expenditure on the creation or acquisition of the asset is incurred on or after 1 April 2002 –
 - (a) this Part applies as if there were a separate asset representing the expenditure so incurred, and
 - (b) the alternative enactments apply as if there were a separate asset representing the expenditure not so incurred.

Origin: FA 2002 Sch.29 para.120(3).

- (6) In subsection (5) “the alternative enactments” means the enactments that apply where this Part does not apply.

Origin: FA 2002 Sch.29 para.122(2).

- (7) Any apportionment necessary for the purposes of subsection (5) must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.120(3).

170 Internally-generated goodwill: time of creation [j0629121]

- (1) For the purposes of section 168 (application of this Part to assets created or acquired on or after 1 April 2002) internally-generated goodwill of a company is treated as created before (and not on or after) 1 April 2002 if the business in question was carried on at any time before 1 April 2002 by the company or a related party.

Origin: FA 2002 Sch.29 para.121.

- (2) And so it is treated as a pre-FA 2002 asset.

Origin: Drafting.

171 Certain other internally-generated assets: time of creation [j0629122]

- (1) This section –
- applies for the purposes of section 168 (application of this Part to assets created or acquired on or after 1 April 2002), and
 - applies to an internally-generated asset of a company representing non-qualifying expenditure.

Origin: FA 2002 Sch.29 para.122(1).

- (2) In this section “non-qualifying expenditure” means expenditure that under the law as it was before 1 April 2002 is not qualifying expenditure for the purposes of any allowance under CAA 2001.

Origin: FA 2002 Sch.29 paras.117(2), 122(1).

- (3) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure, this Part applies as if there were separate assets representing the non-qualifying expenditure and the other expenditure.

Origin: FA 2002 Sch.29 para.122(2).

- (4) If this Part does not apply to the asset representing the non-qualifying expenditure, the alternative enactments also apply as if there were a separate asset representing that expenditure.

Origin: FA 2002 Sch.29 para.122(2).

- (5) In subsection (4) “the alternative enactments” means the enactments that apply where this Part does not apply.

Origin: FA 2002 Sch.29 para.122(2).

- (6) Any apportionment necessary for the purposes of subsection (3) or (4) must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.122(2).

- (7) An asset to which this section applies is treated for the purposes of section 168 as created before (and not on or after) 1 April 2002 if the asset in question was held at any time before that date by the company or a related party.

Origin: FA 2002 Sch.29 para.122(3).

172 Assets representing production expenditure on films: time of creation
[j060651]

- (1) In determining for the purposes of this Part whether an asset representing production expenditure on a film was created before 1 April 2002 or on or after that date, the asset is treated as created when the film is completed.

Origin: FA 2006 s.51(2).

- (2) In this section “completed”, “film” and “production expenditure” have the same meaning as in Chapter 3 of Part 3 of FA 2006 (see sections 31 and 34(1) of that Act).

Origin: Drafting.

173 Expenditure on acquisition treated as incurred when recognised for accounting purposes
[j0629123]

- (1) For the purposes of section 169 (assets treated 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.

Origin: FA 2002 Sch.29 para.123(1).

- (2) This is subject to—
section 174 (when expenditure treated as incurred: application of chargeable gains rule), and
section 175 (when expenditure treated as incurred: application of capital allowances general rule).

Origin: FA 2002 Sch.29 para.123(2).

174 When expenditure treated as incurred: application of chargeable gains rule
[j0629124]

- (1) This section applies if—
(a) expenditure on the acquisition of an asset does not qualify for any form of tax relief against income under the law as it was before 1 April 2002,
(b) that expenditure would be treated as incurred on or after that date under the general rule in section 173, and
(c) the asset is (or would be) treated as disposed of (and therefore acquired) before that date for the purposes of TCGA 1992.

Origin: FA 2002 Sch.29 paras.117(2), 124.

- (2) For the purposes of section 169 (assets treated as created or acquired when expenditure incurred), the expenditure is treated as incurred before 1 April 2002.

Origin: FA 2002 Sch.29 para.124.

175 When expenditure treated as incurred: application of capital allowances general rule [j0629125]

- (1) This section applies if under the law as it was before 1 April 2002 expenditure on the creation or acquisition of an asset is qualifying expenditure for the purposes of any allowance under CAA 2001.

Origin: FA 2002 Sch.29 para.117(1), 125(1).

- (2) For the purposes of section 169 (assets treated as created or acquired when expenditure incurred) the expenditure is treated as incurred when an unconditional obligation to pay it arises.

Origin: FA 2002 Sch.29 para.125(1).

- (3) For this purpose the fact that the whole or part of the expenditure is not required to be paid until a later date does not prevent there being an unconditional obligation to pay it.

Origin: FA 2002 Sch.29 para.125(2).

Fungible assets

176 Fungible assets: application of section 145 [j0629126]

- (1) This section and section 177 apply for the purposes of this Chapter in relation to assets to which section 145 (treatment of fungible assets) applies.

Origin: FA 2002 Sch.29 para.126(1).

- (2) Section 145 applies as if –
- (a) pre-FA 2002 assets, and
 - (b) intangible fixed assets that are not pre-FA 2002 assets, were assets of different kinds.

Origin: FA 2002 Sch.29 para.126(2).

- (3) If section 145 applies (whether or not it is a case where subsection (2) has effect) –

- (a) a single asset comprising pre-FA 2002 assets is treated as itself being a pre-FA 2002 asset, and
- (b) a single asset comprising intangible fixed assets that are not pre-FA 2002 assets is treated as itself being an asset to which this Part applies.

Origin: FA 2002 Sch.29 para.126(3).

177 Realisation and acquisition of fungible assets [j0629126a]

- (1) Subsection (2) applies if –
- (a) a company realises a fungible asset, and

- (b) apart from section 176(2), the asset would be treated as part of a single asset comprising both pre-FA 2002 assets and assets that are not pre-FA 2002 assets.

Origin: FA 2002 Sch.29 para.126(1), (4).

- (2) The realisation is treated as diminishing the single asset of the company comprising pre-FA 2002 assets in priority to diminishing the single asset of the company comprising assets that are not pre-FA 2002 assets.

Origin: FA 2002 Sch.29 para.126(4).

- (3) Fungible assets acquired by a company that would not otherwise be treated as pre-FA 2002 assets are so treated so far as they are identified, in accordance with the following rules, with pre-FA 2002 assets realised by the company.

Origin: FA 2002 Sch.29 para.126(1), (5).

- (4) Rule 1 is that assets acquired are identified with pre-FA 2002 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.

Origin: FA 2002 Sch.29 para.126(6).

- (5) The reference in subsection (4) to assets “of the same kind” is to assets that are, or but for section 176(2) would be, treated as part of a single asset because of section 145.

Origin: FA 2002 Sch.29 para.126(6).

- (6) Rule 2 is that assets realised earlier are identified before assets realised later.

Origin: FA 2002 Sch.29 para.126(6).

- (7) Rule 3 is that assets acquired earlier are identified before assets acquired later.

Origin: FA 2002 Sch.29 para.126(6).

- (8) In this section “fungible asset” means an intangible fixed asset to which section 145 applies.

Origin: FA 2002 Sch.29 para.126(1).

Assets treated as pre-FA 2002 assets

178 Certain assets acquired on transfer of business treated as pre-FA 2002 assets [j0629127]

- (1) This section applies if—
- (a) a company (“the transferor”) transfers to another company (“the transferee”) an asset that is a pre-FA 2002 asset in the hands of the transferor company,
 - (b) the transfer is one in relation to which the transferor is treated for the purposes of TCGA 1992 as disposing of the asset for a consideration that secures that neither a gain nor a loss accrues to it, and
 - (c) it is so treated because of a provision specified in subsection (2).

Origin: FA 2002 Sch.29 para.127(1).

- (2) The provisions are—

- (a) section 139 of TCGA 1992 (reconstruction involving transfer of business),
- (b) section 140A of that Act (transfer of UK trade to company resident in another member State), and
- (c) section 140E of that Act (transfer on formation of SE by merger).

Origin: FA 2002 Sch.29 para.127(1).

- (3) In the hands of the transferee the asset is treated for the purposes of this Part as a pre-FA 2002 asset.

Origin: FA 2002 Sch.29 para.127(2).

- (4) This section does not apply if the transfer mentioned in subsection (1) occurred before 28 June 2002.

Origin: FA 2002 Sch.29 para.127(3).

179 Assets whose value derives from pre-FA 2002 assets treated as pre-FA 2002 assets [j0629127A]

- (1) This section applies if –
 - (a) on or after 1 April 2002 a company (“the acquiring company”) acquires an intangible fixed asset (“the acquired asset”) from a person (“the transferor”),
 - (b) the acquired asset is created on or after 1 April 2002,
 - (c) at the time of the acquisition the transferor and the acquiring company are related parties,
 - (d) the value of the acquired asset derives in whole or in part from any other asset (“the other asset”), and
 - (e) the other asset meets the preserved status conditions (see section 180).

Origin: FA 2002 Sch.29 para.127A(1).

- (2) In the hands of the acquiring company the acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset so far as its value derives from the other asset.

Origin: FA 2002 Sch.29 para.127A(3).

- (3) If only part of the value of the acquired asset derives from the other asset –
 - (a) this Part applies as if there were a separate asset representing the part of the value that does not so derive, and
 - (b) the alternative enactments apply as if there were a separate asset representing the part of the value that does so derive.

Origin: FA 2002 Sch.29 para.127A(4).

- (4) In subsection (3) “the alternative enactments” means the enactments that apply where this Part does not apply.

Origin: FA 2002 Sch.29 para.122(2).

- (5) For the purposes of this section the cases in which the value of an asset may be derived from any other asset include any case where –
 - (a) assets have been merged or divided,
 - (b) assets have changed their nature, or

(c) rights or interests in or over assets have been created or extinguished.

Origin: FA 2002 Sch.29 para.127A(5).

(6) Section 180 supplements this section.

Origin: Drafting.

180 The preserved status conditions etc [j0629127Aa]

(1) For the purposes of section 179(1) the other asset meets the preserved status conditions if subsections (2) and (3) apply.

Origin: FA 2002 Sch.29 para.127A(1), (2).

(2) This subsection applies if on or after 1 April 2002 the other asset –

- (a) has been a pre-FA 2002 asset in the hands of the transferor at a time when the transferor and the acquiring company were related parties, or
- (b) has been a pre-FA 2002 asset in the hands of any other person at a time when the other person and the acquiring company or the other person and the transferor were related parties.

Origin: FA 2002 Sch.29 para.127A(2).

(3) This subsection applies if the other asset has not at any time on or after 5 December 2005 been a chargeable intangible asset in the hands of –

- (a) the acquiring company,
- (b) a person who is a related party in relation to that company, or
- (c) the transferor.

Origin: FA 2002 Sch.29 para.127A(1).

(4) It does not matter for the purposes of section 179(1)(b) who created the acquired asset.

Origin: FA 2002 Sch.29 para.127A(1).

(5) Any apportionment necessary for the purposes of section 179(3) must be made on a just and reasonable basis.

Origin: FA 2002 Sch.29 para.127A(4).

(6) Sections 169 to 175 (provisions explaining when assets are treated as created or acquired) apply for the purposes of section 179 as they apply for the purposes of section 168.

Origin: FA 2002 Sch.29 para.127A(6).

(7) Expressions used in this section have the same meaning as in section 179.

Origin: Drafting.

181 Assets acquired in connection with disposals of pre-FA 2002 assets treated as pre-FA 2002 assets [j0629127B]

(1) This section applies if –

- (a) a person disposes of an asset which is a pre-FA 2002 asset in the person's hands at the time of the disposal,

- (b) a company acquires an intangible fixed asset directly or indirectly in consequence of the disposal or otherwise in connection with it,
- (c) the company and the person are related parties at the time of the disposal, and
- (d) the acquired asset would be a chargeable intangible asset in the hands of the company at the time of the acquisition apart from this section.

Origin: FA 2002 Sch.29 para.127B(1).

- (2) The acquired asset is treated for the purposes of this Part as a pre-FA 2002 asset in the company's hands.

Origin: FA 2002 Sch.29 para.127B(2).

- (3) For the purposes of this section –
 - (a) “asset”, in relation to any disposal, means any asset for the purposes of TCGA 1992,
 - (b) a person “disposes of” an asset if, for the purposes of that Act, the person makes a part disposal of the asset or any other disposal of it, and
 - (c) the time at which a disposal of an asset is made is the time at which it is made for the purposes of that Act.

Origin: FA 2002 Sch.29 para.127B(3).

- (4) For the purposes of this section it does not matter whether –
 - (a) the asset that the person disposes of is the same asset as the acquired asset,
 - (b) the acquired asset is acquired at the time of the disposal, or
 - (c) the acquired asset is acquired by merging assets.

Origin: FA 2002 Sch.29 para.127B(4).

Royalties

182 Application of this Part to royalties [j0629119]

- (1) This Part –
 - (a) applies to royalties recognised for accounting purposes on or after 1 April 2002, and
 - (b) does not apply to royalties recognised for accounting purposes before that date.

Origin: FA 2002 Sch.29 para.119(1).

- (2) But subsection (1) is subject to subsection (3).

Origin: FA 2002 Sch.29 para.119(1).

- (3) This section does not authorise or require an amount to be brought into account in connection with the realisation of a pre-FA 2002 asset.

Origin: FA 2002 Sch.29 para.119(5).

- (4) In this section “realisation” has the same meaning as in Chapter 4 (see section 25).

Origin: FA 2002 Sch.29 para.119(5).

Telecommunications rights

183 Application of this Part to some pre-FA 2002 assets consisting of telecommunications rights [j0629128]

- (1) This Part applies to a pre-FA 2002 asset consisting of a licence or other right within Chapter 10 of Part 2 of ITTOIA (certain telecommunication rights) (see section 146 of that Act).

Origin: FA 2002 Sch.29 para.128(1).

- (2) This Part applies in relation to the asset as if amounts brought into account for tax purposes under Schedule 23 to FA 2000 in accounting periods ending before 1 April 2002 had been so brought into account under this Part.

Origin: FA 2002 Sch.29 para.128(2).

- (3) This subsection applies if the asset –
- (a) was acquired before the beginning of the first accounting period ending on or after 1 April 2002, and
 - (b) is a chargeable intangible asset immediately after the beginning of that period.

Origin: FA 2002 Sch.29 para. 128(3).

- (4) If subsection (3) applies, the asset is treated for the purposes of Chapter 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of the first accounting period ending on or after 1 April 2002.

Origin: FA 2002 Sch.29 para. 128(3).

Roll-over relief for disposals of pre-FA 2002 assets

184 Roll-over relief where pre-FA 2002 assets disposed of on or after 1 April 2002 [j0629130]

- (1) This section applies if a company disposes of a pre-FA 2002 asset on or after 1 April 2002.

Origin: FA 2002 Sch.29 para.130(1).

- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as if –
- (a) references to the realisation of the old asset were references to its disposal,
 - (b) references to its being a chargeable intangible asset were references to its being a chargeable asset within TCGA 1992,
 - (c) references to the proceeds of its realisation were references to the net proceeds of disposal under that Act, and
 - (d) references to its cost recognised for tax purposes were references to the cost under that Act.

Origin: FA 2002 Sch.29 para.130(2).

- (3) For the purposes of subsection (2)(b) an asset is a chargeable asset within TCGA 1992 in relation to a company at any time if –

- (a) any gain accruing to the company on the disposal of it at that time would be a chargeable gain within the meaning of that Act, and
- (b) at that time the company is UK resident or ordinarily UK resident.

Origin: FA 2002 Sch.29 para.130(3).

- (4) Subsection (3) does not apply at any time if the company would be treated 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 a disposal of the asset at that time.

Origin: FA 2002 Sch.29 para.130(3).

- (5) For the purposes of subsection (2)(c) the net proceeds of disposal under TCGA 1992 are taken to be the amount or value of the consideration for the disposal, less any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act.

Origin: FA 2002 Sch.29 para.130(4).

- (6) For the purposes of subsection (2)(d) the cost under TCGA 1992 is taken to be an amount equal to the difference between –
 - (a) the net proceeds of disposal (as defined in subsection (5)), and
 - (b) the amount of the chargeable gain on the disposal.

Origin: FA 2002 Sch.29 para.130(5).

- (7) Section 137 (exclusion of roll-over relief in case of part realisation involving related party acquisition) does not apply in a case where Chapter 7 applies because of this section.

Origin: FA 2002 Sch.29 para.130(6).

- (8) References in this section to the disposal of an asset have the same meaning as in TCGA 1992.

Origin: FA 2002 Sch.29 para.130(1).

185 Roll-over relief where degrouping charge on pre-FA 2002 asset arises on or after 1 April 2002 [j0629131]

- (1) This section applies if –
 - (a) a company is treated under section 179(3) or (6) of TCGA 1992 (degrouping charge) as having sold and reacquired a pre-FA 2002 asset, and
 - (b) under section 179(4) or (8) of that Act the gain is treated as accruing on or after 1 April 2002.

Origin: FA 2002 Sch.29 para.131(1).

- (2) Chapter 7 (roll-over relief in case of realisation and reinvestment) applies as specified in section 184(2) and with the additional modifications specified in subsections (3) to (5).

Origin: FA 2002 Sch.29 para.131(2).

- (3) In section 45 (conditions relating to the old asset and its realisation), 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 TCGA 1992 throughout the period during which it was held by the company referred to in section 179 of that Act as “company B”.

[Origin: FA 2002 Sch.29 para.131\(2\).](#)

- (4) In section 46(1) (conditions relating to expenditure on other assets), for the references to the date of realisation of the old asset substitute references –
- (a) in a case within section 179(3) of TCGA 1992, to the time at which the gain is treated as accruing under section 179(4) of that Act, and
 - (b) in a case within subsection 179(6) of that Act, to the time at which the gain is treated as accruing under section 179(8) of that Act.

[Origin: FA 2002 Sch.29 para.131\(2\).](#)

- (5) For references to the proceeds of realisation substitute references to the amount of the consideration for which the company is treated under TCGA 1992 as having sold and reacquired the asset.

[Origin: FA 2002 Sch.29 para.131\(2\).](#)

- (6) Section 184(3) and (4) (meaning of “chargeable asset”) applies for the purposes of subsection (3).

[Origin: FA 2002 Sch.29 para.131\(3\).](#)

- (7) Section 137 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Chapter 7 applies because of this section.

[Origin: FA 2002 Sch.29 para.131\(4\).](#)