TAXATION OF CHARGEABLE GAINS

PART 19

Principal Provisions Relating to Taxation of Chargeable Gains

CHAPTER 1

Assets and acquisitions and disposals of assets

Assets.

532.—All forms of property shall be assets for the purposes of the Capital Gains Tax Acts whether situated in the State or not, including— [CGTA75 s7(1); FA80 s62(a)]

(*a*) options, debts and incorporeal property generally,

(*b*) any currency other than Irish currency, and

(*c*) any form of property created by the person disposing of it, or otherwise becoming owned without being acquired.

Location of assets.

533.—The situation of assets specified in this section shall, except where otherwise provided by *section 29*, be determined for the purposes of the Capital Gains Tax Acts in accordance with the following provisions: [CGTA75 s48]

(*a*) the situation of rights or interests (otherwise than by means of security) in or over immovable property shall be that of the immovable property;

(*b*) subject to this section, the situation of rights or interests (otherwise than by means of security) in or over tangible movable property shall be that of the tangible movable property;

(*c*) subject to this section, a debt, secured or unsecured, shall be situated in the State only if the creditor is resident in the State;

(*d*) shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, shall be situated in the country of that authority;

(*e*) subject to *paragraph (d)*, registered shares or securities shall be situated where they are registered and, if registered in more than one register, where the principal register is situated;

(*f*) a ship or aircraft shall be situated in the State only if the owner is resident in the State, and an interest or right in or over a ship or aircraft shall be situated in the State only if the person entitled to the interest or right is resident in the State;

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(*g*) the situation of goodwill as a trade, business or professional asset shall be at the place where the trade, business or profession is carried on;

(*h*) patents, trade marks and designs shall be situated where they are registered and, if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade mark or design shall be situated in the State if they, or any rights derived from them, are exercisable in the State;

(*i*) a judgment debt shall be situated where the judgment is recorded.

Disposals of assets.

[CGTA75 s8(1)]

534.—For the purposes of the Capital Gains Tax Acts—

(*a*) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and

(*b*) there shall be a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and, generally, there shall be a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

Disposals where capital sums derived from assets.

[CGTA75 s8(2) and (7)]

535.—(1) In this section, ''capital sum'' means any money or money's worth not excluded from the consideration taken into account in the computation of the gain under *Chapter 2* of this Part.

(2) (*a*) Subject to *sections 536* and *537(1)* and to any other exceptions in the Capital Gains Tax Acts, there shall be for the purposes of those Acts a disposal of an asset by its owner where any capital sum is derived from the asset notwithstanding that no asset is acquired by the person paying the capital sum, and this paragraph shall apply in particular to—

(i) capital sums received by means of compensation for any kind of damage or injury to an asset or for the loss, destruction or dissipation of an asset or for any depreciation or risk of depreciation of an asset,

(ii) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, an asset,

(iii) capital sums received in return for forfeiture or surrender of a right or for refraining from exercising a right, and

(iv) capital sums received as consideration for use or exploitation of an asset.

(*b*) Without prejudice to *paragraph (a)(ii)* but subject to *paragraph (c)*, neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue, and in

this paragraph ''policy of insurance'' does not include a policy of assurance on human life. PT.19 S.535

(*c*) *Paragraph (b)* shall not apply where the right to any capital sum within *paragraph (a)(ii)* is assigned after the event giving rise to the damage or injury to, or the loss or depreciation of, an asset has occurred, and for the purposes of the Capital Gains Tax Acts such an assignment shall be deemed to be a disposal of an interest in the asset concerned.

Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases.

[CGTA75 s29(1) to (3) and (5)]

536.—(1) (*a*) Subject to *paragraph (b)*, where the recipient so claims, receipt of a capital sum within *subparagraph (i)*, *(ii)*, *(iii)* or *(iv)* of *section 535(2)(a)* derived from an asset which is not lost or destroyed shall not be treated as a disposal of the asset if—

(i) the capital sum is wholly applied in restoring the asset, or

(ii) the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum;

but, if the receipt is not treated as a disposal, all sums which, if the receipt had been so treated, would have been taken into account as consideration for that disposal in the computation of a gain accruing on the disposal shall be deducted from any expenditure allowable under *Chapter 2* of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(*b*) *Paragraph (a)* shall not apply to cases within *subparagraph (ii)* of that paragraph if immediately before the receipt of the capital sum there is no expenditure attributable to the asset under *paragraphs (a)* and *(b)* of *section 552(1)* or if the consideration for the part disposal deemed to be effected on receipt of the capital sum exceeds that expenditure.

(2) Where an asset is lost or destroyed and a capital sum received as compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is, within one year of receipt or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

(*a*) the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrued to such owner, and

(*b*) the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received as compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which such owner is treated as receiving under *paragraph (a)*.

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(3) A claim shall not be made under *subsection (2)* if part only of the capital sum is applied in acquiring the new asset; but, if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, the owner shall on due claim be treated for the purposes of the Capital Gains Tax Acts as if—

(*a*) the amount of the gain so accruing were reduced to the amount of that part of the capital sum not applied in acquiring the new asset (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(*b*) the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under *paragraph (a)*.

(4) This section shall not apply in relation to a wasting asset.

Mortgages and charges not to be treated as disposals.

[CGTA75 s8(4), (5) and (6)]

537.—(1) The conveyance or transfer as security of an asset or of an interest or right in or over an asset, or the transfer of a subsisting interest or right as security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of the Capital Gains Tax Acts as involving any acquisition or disposal of the asset.

(2) Where a person entitled to an asset as security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, such person's dealings with the asset shall be treated for the purposes of the Capital Gains Tax Acts as if they were done through such person as nominee by the person entitled to the asset subject to the security, charge or incumbrance, and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person so entitled.

(3) An asset shall be treated as having been acquired free of any interest or right as security subsisting at the time of any acquisition of the asset, and as being disposed of free of any such interest or right subsisting at the time of the disposal and, where an asset is acquired subject to any such interest or right, the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.

Disposals where assets lost or destroyed or become of negligible value.

[CGTA75 s12(3), (4) and (5)]

538.—(1) Subject to the Capital Gains Tax Acts and in particular to *section 540*, the occasion of the entire loss, destruction, dissipation or extinction of an asset shall for the purposes of those Acts constitute a disposal of the asset whether or not any capital sum as compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.

(2) Where on a claim by the owner of an asset the inspector is satisfied that the value of an asset has become negligible, the inspector may allow the claim, and thereupon the Capital Gains Tax Acts shall apply as if the claimant had sold and immediately reacquired the asset for a consideration of an amount equal to the value specified in the claim.

(3) For the purposes of *subsections (1)* and *(2)*, a building and any permanent or semi-permanent structure in the nature of a building may be regarded as an asset separate from the land on which it is situated; but, where either of those subsections applies in accordance with this subsection, the person deemed to make the disposal of the building shall be treated as if such person had also sold and immediately reacquired the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time. Pt.19 S.538

Disposals in cases of hire purchase and similar transactions.

[CGTA75 s10(2)]

539.—A hire purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to such person shall be treated for the purposes of the Capital Gains Tax Acts, both in relation to such person and in relation to the person from whom the use and enjoyment of the asset is obtained, as if it amounted to an entire disposal of the asset to such person at the beginning of the period for which such person obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by means of repayment or discharge of tax or otherwise, as may be required where the period for which such person has the use and enjoyment of the asset terminates without the property in the asset passing to such person.

Options and forfeited deposits.

[CGTA75 s47(1) to (6) and (8) to (11); FA92 s63]

540.—(1) In this section—

''quoted option'' means an option which at the time of abandonment or other disposal is quoted and dealt in on a stock exchange in the State or elsewhere in the same manner as shares;

''traded option'' means an option which at the time of abandonment or other disposal is quoted on a stock exchange or a futures exchange in the State or elsewhere;

references to an option include references to an option binding the grantor to grant a lease for a premium or to enter into any other transaction which is not a sale, and references to buying and selling in pursuance of an option shall be construed accordingly.

(2) Without prejudice to *sections 534* and *535*, the grant of an option, including—

(*a*) the grant of an option binding the grantor to sell an asset the grantor does not own and, because the option is abandoned, never has occasion to own, and

(*b*) the grant of an option binding the grantor to buy an asset which, because the option is abandoned, the grantor does not acquire,

shall constitute the disposal of an asset (being the option) for the purposes of the Capital Gains Tax Acts, but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.

(3) Where an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of the grantor's obligations under the option shall be treated as a single transaction, and accordingly for the purposes of the Capital Gains Tax Acts—

(*a*) if the option binds the grantor to sell, the consideration for the option shall be part of the consideration for the sale, and

(*b*) if the option binds the grantor to buy, the consideration for the option shall be deducted from the cost of acquisition incurred by the grantor in buying in pursuance of the grantor's obligations under the option.

(4) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset for the purposes of the Capital Gains Tax Acts by that person; but, if an option is exercised, the acquisition of the option (whether directly from the grantor or not) and the transaction entered into by the person exercising the option in exercise of that person's rights under the option shall be treated as a single transaction, and accordingly for the purposes of the Capital Gains Tax Acts—

(*a*) if the option binds the grantor to sell, the cost of acquiring the option shall be part of the cost of acquiring the asset which is sold, and

(*b*) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of the asset which is bought by the grantor of the option.

(5) (*a*) The abandonment of an option by the person for the time being entitled to exercise it shall constitute the disposal of an asset (being the option) for the purposes of the Capital Gains Tax Acts by that person.

(*b*) Subject to *subsections (7)* and *(8)(a)*, the abandonment of an option by the person for the time being entitled to exercise it shall not for the purposes of the Capital Gains Tax Acts give rise to an allowable loss.

(6) In relation to the disposal by means of transfer of an option binding the grantor to sell or buy shares or securities which have a quoted market value on a stock exchange in the State or elsewhere, the option shall be regarded for the purposes of the Capital Gains Tax Acts as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier, but without prejudice to the application of the provisions of *Chapter 2* of this Part relating to wasting assets to other descriptions of options.

(7) Where an option, being an option to acquire assets exercisable by a person intending to use the assets, if acquired, for the purposes of a trade carried on by that person or which that person commences to carry on within 2 years of that person's acquisition of the option, is disposed of or abandoned, then—

(*a*) if the option is abandoned, *subsection (5)(b)* shall not apply, and

(*b*) *section 560(3)* shall not apply.

(8) (*a*) Where—

(i) a quoted option to subscribe for shares in a company, or

(ii) a traded option,

is disposed of or abandoned, then—

(I) if the option is abandoned, *subsection (5)(b)* shall not apply, and

(II) *section 560(3)* and *subsection (6)* shall not apply.

(*b*) Where a quoted option to subscribe for shares in a company is dealt in within 3 months after the taking effect, with respect to the company granting the option, of any reorganisation, reduction, conversion or amalgamation to which *section 584*, *585*, *586* or *587* applies (or within such longer period as the Revenue Commissioners may by notice in writing allow), the option shall for the purposes of *section 584*, *585*, *586* or *587* be regarded as the shares which could be acquired by exercising the option, and *section 548(3)* shall apply for determining its market value.

(9) This section shall apply in relation to an option binding the grantor both to sell and to buy as if it were 2 separate options with 50 per cent of the consideration attributed to each option.

(10) This section shall apply in relation to a forfeited deposit of purchase money or other consideration money for a prospective purchase or other transaction which is abandoned as it applies in relation to the consideration for an option which binds the grantor to sell and which is not exercised.

Debts.

[CGTA75 s46; FA80 s62(b); FA96 s61(1); FA97 s78]

541.—(1) (*a*) For the purposes of the Capital Gains Tax Acts but subject to *paragraph (b)*, where a person incurs a debt to another person (being the original creditor), whether in Irish currency or in some other currency, no chargeable gain shall accrue to that creditor or to that creditor's personal representative or legatee on a disposal of the debt.

(*b*) *Paragraph (a)* shall not apply in the case of a debt on a security within the meaning of *section 585*.

(2) Subject to *subsection (1)* and *sections 585* and *586*, the satisfaction of a debt or part of a debt (including a debt on a security within the meaning of *section 585*) shall be treated for the purposes of the Capital Gains Tax Acts as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.

(3) Where property is acquired by a creditor in satisfaction of the creditor's debt or part of that debt, then, subject to *sections 585* and *586*, the property shall not be treated for the purposes of the Capital Gains Tax Acts as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but, if under *subsection (1)* (and in a case not within either *section 585* or *586*) no chargeable gain is to accrue on a disposal of the debt by the original creditor and a chargeable gain accrues to that creditor on a disposal by that creditor of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to exceed the chargeable gain which would have accrued if that creditor had acquired the property for a consideration equal to the amount of the debt or that part of the debt.

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(4) For the purposes of the Capital Gains Tax Acts, a loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or the original creditor's personal representative or legatee at a time when the creditor or the creditor's personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more than one purchase through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.

(5) Where the original creditor is a trustee and the debt when created is settled property, *subsections (1)* and *(4)* shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled as against the trustee to the debt on its ceasing to be settled property and to that person's personal representative or legatee.

(6) This section shall not apply to a debt owed by a bank which is not in Irish currency and which is represented by a sum standing to the credit of a person in an account in the bank, unless it represents currency acquired by the holder for the personal expenditure outside the State of the holder or his or her family or dependants (including expenditure on the maintenance of any residence outside the State).

(7) For the purposes of this section, a debenture issued by any company shall be deemed to be a security (within the meaning of *section 585*) if it is issued—

(*a*) on a reorganisation referred to in *section 584(2)* or in pursuance of the debenture's allotment on any such reorganisation,

(*b*) in exchange for shares in or debentures of another company where the requirements of *section 586(2)* are satisfied in relation to the exchange,

(*c*) under any arrangements referred to in *section 587(2)*,

(*d*) in connection with any transfer of assets referred to in *section 631*,

(*e*) in connection with any disposal of assets referred to in *section 632*,

(*f*) in the course of a transaction which is the subject of an application under *section 637*, or

(*g*) in pursuance of rights attached to any debenture within *paragraph (a)*, *(b)*, *(c)*, *(d)*, *(e)* or *(f)*.

(8) *Paragraphs (d)*, *(e)* and *(f)*, and (in so far as it relates to debentures within those paragraphs) *paragraph (g)*, of *subsection (7)* shall apply as respects the disposal of a debenture on or after the 26th day of March, 1997.

Time of disposal and acquisition.

[CGTA75 s10(1) and (3)]

542.—(1) (*a*) Subject to *paragraph (b)* and *subsection (2)*, for the purposes of the Capital Gains Tax Acts, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made shall be the time at which the contract is made

(and not, if different, the time at which the asset is conveyed or transferred).

(*b*) Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied.

(*c*) For the purposes of the Capital Gains Tax Acts, where an interest in land is acquired, otherwise than under a contract, by an authority possessing compulsory purchase powers, the time at which the disposal and acquisition is made shall be the time at which the compensation for the acquisition is agreed or otherwise determined (variations on appeal being disregarded for this purpose) or, if earlier, the time at which the authority enters on the land in pursuance of its powers.

(2) For the purposes of *subparagraphs (i)* to *(iv)* of *section 535(2)(a)*, the time of disposal shall be the time at which any capital sum is received.

Transfers of value derived from assets.

[CGTA75 s45]

543.—(1) Without prejudice to the generality of the provisions of the Capital Gains Tax Acts as to the transactions which are disposals of assets, any transaction which under this section is to be treated as a disposal of an asset—

(*a*) shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration, and

(*b*) in so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration or additional consideration for the disposal, shall be treated as not being at arm's length, and the consideration so obtainable, added to the consideration actually passing, shall be treated as the market value of what is acquired.

(2) (*a*) Where a person having control of a company exercises that control so that value passes out of shares in the company owned by such person or a person with whom such person is connected, or out of rights over the company exercisable by such person or by a person with whom such person is connected, and passes into other shares in or rights over the company, that exercise of such person's control shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.

(*b*) References in *paragraph (a)* to a person include references to 2 or more persons connected with one another.

(3) Where, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property, there is any adjustment of the rights and liabilities under the lease (whether or not involving the grant of a new lease) which as a whole is favourable to the lessor, that shall constitute a disposal by the lessee of an interest in the property.

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(4) Where an asset is subject to any description of right or restriction, the extinction or abrogation in whole or in part of the right or restriction by the person entitled to enforce it shall constitute a disposal by that person of the right or restriction.

CHAPTER 2

Computation of chargeable gains and allowable losses

Interpretation and general (*Chapter 2*).

[CGTA75 s51(2), Sch1 pars1 and 5(3) and Sch4 par13; CGT(A)A78 s17 and Sch2]

544.—(1) In this Chapter, ''renewals allowance'' means a deduction allowable in computing profits, gains or losses for the purposes of the Income Tax Acts by reference to the cost of acquiring an asset in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.

(2) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits, gains or losses for the purposes of the Income Tax Acts shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession or employment are not chargeable to income tax or that losses are not allowable for those purposes.

(3) References in this Chapter to income or profits charged or chargeable to tax include references to income or profits taxed or, as the case may be, taxable by deduction at source.

(4) No deduction shall be allowable in a computation under the Capital Gains Tax Acts more than once from any sum or from more than one sum.

(5) For the purposes of any computation under this Chapter of a gain accruing on a disposal, any necessary apportionment shall be made of any consideration or of any expenditure, and the method of apportionment adopted shall, subject to this Chapter, be such method as appears to the inspector or on appeal the Appeal Commissioners to be just and reasonable.

(6) *Section 557* and the other provisions of the Capital Gains Tax Acts for apportioning on a part disposal expenditure which is deductible in computing a gain shall be operated before the operation of and without regard to—

(*a*) *section 1028(5)*,

(*b*) *section 597*, and

(*c*) any other provision making an adjustment to secure that neither a gain nor a loss accrues on a disposal.

(7) Any assessment to income tax or any decision on a claim under the Income Tax Acts, and any decision on an appeal under the Income Tax Acts against such an assessment or decision, shall be conclusive in so far as under any provision of the Capital Gains Tax Acts liability to tax depends on the provisions of the Income Tax Acts.

(8) In so far as the provisions of the Capital Gains Tax Acts require the computation of a gain by reference to events before the 6th day of April, 1974, all those provisions, including the provisions

fixing the amount of the consideration deemed to be given on a disposal or an acquisition, shall apply except in so far as expressly excluded. PT.19 S.544

Chargeable gains.

[CGTA75 s7(2) and s11; CGT(A)A78 s17 and Sch2]

545.—(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no chargeable gain shall accrue on its disposal.

(2) The amount of the gain accruing on the disposal of an asset shall be computed in accordance with this Chapter, and subject to the other provisions of the Capital Gains Tax Acts.

(3) Except where otherwise expressly provided by the Capital Gains Tax Acts, every gain shall be a chargeable gain.

Allowable losses.

[CGTA75 s7(2) and s12(1), (2), (6) and (7); CGT(A)A78 s16 and Sch1 par7]

546.—(1) Where under the Capital Gains Tax Acts an asset is not a chargeable asset, no allowable loss shall accrue on its disposal.

(2) Except where otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(3) Except where otherwise expressly provided, the provisions of the Capital Gains Tax Acts which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss and part not, and references in the Capital Gains Tax Acts to an allowable loss shall be construed accordingly.

(4) A loss accruing to a person in a year of assessment for which the person is neither resident nor ordinarily resident in the State shall not be an allowable loss for the purposes of the Capital Gains Tax Acts unless under *section 29(3)* the person would be chargeable to capital gains tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.

(5) Except where provided by *section 573*, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Acts—

(*a*) more than once in respect of any loss or part of a loss, and

(*b*) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts.

(6) For the purposes of *section 31*, where, on the assumption that there were no allowable losses to be deducted under that section, a person would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, any allowable losses to be deducted under that section shall be deducted—

(*a*) if the person would be so chargeable at 2 different rates, from the chargeable gains which would be so chargeable at the higher of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the lower of those rates, and

(*b*) if the person would be so chargeable at 3 or more rates, from the chargeable gains which would be so chargeable

at the highest of those rates and, in so far as they cannot be so deducted, from the chargeable gains which would be so chargeable at the next highest of those rates, and so on.

Disposals and acquisitions treated as made at market value.

[CGTA75 s9; FA82 s62; FA92 s62]

547.—(1) Subject to the Capital Gains Tax Acts, a person's acquisition of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where—

(*a*) the person acquires the asset otherwise than by means of a bargain made at arm's length (including in particular where the person acquires it by means of a gift),

(*b*) the person acquires the asset by means of a distribution from a company in respect of shares in the company, or

(*c*) the person acquires the asset wholly or partly—

(i) for a consideration that cannot be valued,

(ii) in connection with the person's own or another person's loss of office or employment or diminution of emoluments, or

(iii) otherwise in consideration for or in recognition of the person's or another person's services or past services in any office or employment or of any other service rendered or to be rendered by the person or another person.

(2) (*a*) In this subsection, ''shares'' includes stock, debentures and any interests to which *section 587(3)* applies and any option in relation to such shares, and references in this subsection to an allotment of shares shall be construed accordingly.

(*b*) Notwithstanding *subsection (1)* and *section 584(3)*, where a company, otherwise than by means of a bargain made at arm's length, allots shares in the company (in this subsection referred to as ''the new shares'') to a person connected with the company, the consideration which the person gives or becomes liable to give for the new shares shall for the purposes of the Capital Gains Tax Acts be deemed to be an amount (including a nil amount) equal to the lesser of—

(i) the amount or value of the consideration given by the person for the new shares, and

(ii) the amount by which the market value of the shares in the company which the person held immediately after the allotment of the new shares exceeds the market value of the shares in the company which the person held immediately before the allotment or, if the person held no such shares immediately before the allotment, the market value of the new shares immediately after the allotment.

(3) *Subsection (1)* shall not apply to the acquisition of an asset where—

(*a*) there is no corresponding disposal of the asset, and

(*b*) (i) there is no consideration in money or money's worth for the asset, or

(ii) the consideration for the asset is of an amount or value which is lower than the market value of the asset.

(4) (*a*) Subject to the Capital Gains Tax Acts, a person's disposal of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where—

(i) the person disposes of the asset otherwise than by means of a bargain made at arm's length (including in particular where the person disposes of it by means of a gift), or

(ii) the person disposes of the asset wholly or partly for a consideration that cannot be valued.

(*b*) *Paragraph (a)* shall not apply to a disposal by means of a gift made before the 20th day of December, 1974, and any loss incurred on a disposal by means of a gift made before that date shall not be an allowable loss.

Valuation of assets.

[CGTA75 s49(1) to (6); CTA76 s140(2) and Sch2 PtII par7]

548.—(1) Subject to this section, in the Capital Gains Tax Acts, ''market value'', in relation to any assets, means the price which those assets might reasonably be expected to fetch on a sale in the open market.

(2) In estimating the market value of any assets, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at the same time.

(3) (*a*) The market value of shares or securities quoted on a stock exchange in the State or in the United Kingdom shall, except where in consequence of special circumstances the prices quoted are by themselves not a proper measure of market value, be as follows—

(i) in relation to shares or securities listed in the Stock Exchange Official List-Irish—

(I) the price shown in that list at which bargains in the shares or securities were last recorded (the previous price), or

(II) where bargains other than bargains done at special prices were recorded in that list for the relevant date, the price at which the bargains were so recorded or, if more than one such price was so recorded, a price halfway between the highest and the lowest of such prices,

taking the amount under *clause (I)* if less than under *clause (II)* or if no such business was recorded on the relevant date, and taking the amount under *clause (II)* if less than under *clause (I),* and

(ii) in relation to shares or securities listed in the Stock Exchange Daily Official List—

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(I) the lower of the 2 prices shown in the quotations for the shares or securities on the relevant date plus 25 per cent of the difference between those 2 figures, or

(II) where bargains other than bargains done at special prices were recorded in that list for the relevant date, the price at which the bargains were so recorded or, if more than one such price was so recorded, a price halfway between the highest and the lowest of such prices,

taking the amount under *clause (I)* if less than under *clause (II)* or if no such bargains were recorded for the relevant date, and taking the amount under *clause (II)* if less than under *clause (I)*.

(*b*) Notwithstanding *paragraph (a)*—

(i) where the shares or securities are listed in both of the Official Lists referred to in that paragraph for the relevant date, the lower of the 2 amounts as ascertained under *subparagraphs (i)* and *(ii)* of that paragraph shall be taken,

(ii) this subsection shall not apply to shares or securities for which some other stock exchange affords a more active market, and

(iii) if the stock exchange concerned, or one of the stock exchanges concerned, is closed on the relevant date, the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.

(4) Where shares and securities are not quoted on a stock exchange at the time at which their market value is to be determined by virtue of *subsection (1)*, it shall be assumed for the purposes of such determination that in the open market which is postulated for the purposes of *subsection (1)* there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if such prospective purchaser were proposing to purchase it from a willing vendor by private treaty and at arm's length.

(5) In the Capital Gains Tax Acts, ''market value'', in relation to any rights of unit holders in any unit trust (including any unit trust legally established outside the State) the buying and selling prices of which are published regularly by the managers of the trust, means an amount equal to the buying price (that is, the lower price) so published on the relevant date or, if none was published on that date, on the latest date before that date.

(6) If and in so far as any appeal against an assessment to capital gains tax or against a decision on a claim under the Capital Gains Tax Acts involves the question of the value of any shares or securities in a company resident in the State, other than shares or securities quoted on a stock exchange, that question shall be determined in the like manner as an appeal against an assessment made on the company.

(7) *Subsection (6)* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax. Pt.19 S.548

Transactions between connected persons.

[CGTA75 s33(1) to (6); FA89 s87]

549.—(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset.

(2) Without prejudice to the generality of *section 547*, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length.

(3) Where on the disposal a loss accrues to the person making the disposal, the loss shall not be deductible except from a chargeable gain accruing to that person on some other disposal of an asset to the person acquiring the asset mentioned in *subsection (1)*, being a disposal made at a time when they are connected persons.

(4) *Subsection (3)* shall not apply to a disposal by means of a gift in settlement if the gift and the income from it are wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.

(5) Where the asset mentioned in *subsection (1)* is an option to enter into a sale or other transaction given by the person making the disposal, a loss accruing to a person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person not connected with the person acquiring the asset.

(6) Where the asset mentioned in *subsection (1)* is subject to any right or restriction enforceable by the person making the disposal or by a person connected with that person, then (where the amount of the consideration for the acquisition is in accordance with *subsection (2)* deemed to be equal to the market value of the asset), that market value shall be what its market value would be if not subject to the right or restriction, reduced by the lesser of—

(*a*) the market value of the right or restriction, and

(*b*) the amount by which its extinction would enhance the value of the asset to its owner.

(7) Where the right or restriction referred to in *subsection (6)*—

(*a*) is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with that person,

(*b*) is an option or other right to acquire the asset, or

(*c*) in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise,

then, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

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(8) (*a*) Where a person disposes of an asset to another person in such circumstances that—

(i) *subsection (7)* would but for this subsection apply in determining the market value of the asset, and

(ii) the person is not chargeable to capital gains tax under *section 29* or *30* in respect of any gain accruing on the person's disposal of the asset,

then, as respects any subsequent disposal of the asset by the other person, that other person's acquisition of the asset shall for the purposes of the Capital Gains Tax Acts be deemed to be for an amount equal to the market value of the asset determined as if *subsection (7)* had not been enacted.

(*b*) This subsection shall apply—

(i) to disposals made on or after the 25th day of January, 1989, and

(ii) for the purposes of the determination of any deduction to be made from a chargeable gain accruing on or after the 25th day of January, 1989, in respect of an allowable loss, notwithstanding that the loss accrued or but for this section would have accrued on a disposal made before that day.

(9) *Subsections (6)* and *(7)* shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, or to any right or restriction under a mortgage or other charge.

Assets disposed of in series of transactions.

[CGTA75 s34]

550.—Where a person is given, or acquires from one or more persons with whom such person is connected, by means of 2 or more transactions, assets of which the aggregate market value, when considered separately in relation to the separate other transactions, is less than the aggregate market value of those assets when considered together, then, for the purposes of the Capital Gains Tax Acts, the market value of the assets where relevant shall be taken to be the larger market value and that value shall be apportioned rateably to the respective disposals.

Exclusion from consideration for disposals of sums chargeable to income tax.

[CGTA75 s51(1) and Sch1 par2; CTA76 s140(2) and Sch2 PtII par8]

551.—(1) In this section, ''rent'' includes any rent charge, fee farm rent and any payment in the nature of a rent.

(2) There shall be excluded from the consideration for a disposal of an asset taken into account in the computation under this Chapter of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income, profits, gains or losses for the purposes of the Income Tax Acts of, the person making the disposal; but the exclusion from consideration under this subsection shall not be taken as applying to a computation in accordance with Case I of Schedule D for the purpose of restricting relief in respect of expenses of management under *section 707*.

(3) *Subsection (2)* shall not be taken as excluding from the consideration so taken into account any money or money's worth taken

into account in the making of a balancing charge under *Part 9* or under *Chapter 1* of *Part 29*. Pt.19 S.551

(4) This section shall not preclude the taking into account in a computation under this Chapter of the gain, as consideration for the disposal of an asset, of the capitalised value of a rent (as in a case where rent is exchanged for some other asset), or of a right of any other description to income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

Acquisition, enhancement and disposal costs.

[CGTA75 s51(1) and Sch1 par3(1) to (5); CTA76 s140(2) and Sch2 PtII par9]

552.—(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—

(*a*) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(*b*) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(*c*) the incidental costs to the person of making the disposal.

(2) For the purposes of the Capital Gains Tax Act as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with—

(*a*) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(*b*) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

(3) (*a*) Where—

(i) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under *subsection (1)* in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

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(ii) that expenditure was defrayed out of borrowed money,

(iii) the company charged to capital all or any part of the interest on that borrowed money referable to a period ending on or before the disposal, and

(iv) the company is chargeable to capital gains tax in respect of the gain,

then, the sums so allowable under *subsection (1)* shall include the amount of that interest charged to capital except in so far as such interest has been taken into account for the purposes of relief under the Income Tax Acts, or could have been so taken into account but for an insufficiency of income or profits or gains.

(*b*) Subject to *paragraph (a)*, no payment of interest shall be allowable as a deduction under this section.

(4) Without prejudice to *section 554*, there shall be excluded from the sums allowable as a deduction under this section any premium or other payment made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

(5) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which the person became absolutely entitled as legatee or as against the trustees of settled property—

(*a*) any expenditure within *subsection (2)* incurred by the person in relation to the transfer of the asset to the person by the personal representatives or trustees, and

(*b*) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction under this section.

Interest charged to capital.

[CTA76 s128]

553.—Where—

(*a*) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under *section 552* in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

(*b*) that expenditure was defrayed out of borrowed money, and

(*c*) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

then, the sums so allowable shall, notwithstanding *section 552(3)(b)*, include the amount of that interest charged to capital.

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554.—(1) There shall be excluded from the sums allowable under *section 552* as a deduction any expenditure allowable as a deduction in computing the profits or gains or losses of a trade or profession for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains, and this subsection shall apply irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

Exclusion of expenditure by reference to income tax.

[CGTA75 s51(1) and Sch1 par4]

(2) Without prejudice to *subsection (1)*, there shall be excluded from the sums allowable under *section 552* as a deduction any expenditure which, if the assets or all the assets to which the computation relates were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were chargeable to income tax, would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of the Income Tax Acts.

555.—(1) *Section 554* shall not require the exclusion from the sums allowable as a deduction under *section 552* of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made but, in the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of that expenditure.

Restriction of losses by reference to capital allowances and renewals allowances.

[CGTA75 s51(1) and Sch1 par 5(1), (2) and (4)]

(2) Where the person making the disposal acquired the asset—

(*a*) by a transfer to which *section 289(6)* or *295* applies, or

(*b*) by a transfer by means of a sale in relation to which an election under *section 312(5)* was made,

then, this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except in so far as any loss to the transferor was restricted under those sections) been made to the person making the disposal (being the transferee) and, where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection may be taken into account in relation to the transferor shall also be taken into account in relation to the transferee, and so on for any series of transfers before the disposal.

(3) The amount of capital allowances to be taken into account under this section in relation to a disposal includes any allowances to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event, and of any balancing charge to which effect might have been so given but for the making of an election under *section 290*.

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Adjustment of allowable expenditure by reference to consumer price index.

[CGT(A)A78 s3, s16 and Sch1 par1; S.I. No. 157 of 1997]

556.—(1) In this section—

''the consumer price index number'' means the All Items Consumer Price Index Number compiled by the Central Statistics Office;

''the consumer price index number relevant to any year of assessment'' means the consumer price index number at the mid-February before the commencement of that year expressed on the basis that the consumer price index at mid-November, 1968, was 100.

(2) (*a*) For the purposes of computing the chargeable gain accruing to a person on the disposal of an asset, each sum (in this section referred to as ''deductible expenditure'') allowable as a deduction from the consideration for the disposal under *paragraphs (a)* and *(b)* of *section 552(1)* shall be adjusted by multiplying it by the figure (in this section referred to as ''the multiplier'') specified in *subsection (5)* or determined under *subsection (6)*, as the case may be.

(*b*) This subsection shall not apply in relation to deductible expenditure where the person making the disposal had incurred the expenditure in the period of 12 months ending on the date of the disposal.

(3) For the purposes of the Capital Gains Tax Acts, it shall be assumed that an asset held by a person on the 6th day of April, 1974, was sold and immediately reacquired by such person on that date, and there shall be deemed to have been given by such person as consideration for the reacquisition an amount equal to the market value of the asset at that date.

(4) *Subsections (2)* and *(3)* shall not apply in relation to the disposal of an asset if as a consequence of the application of those subsections—

(*a*) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if those subsections did not apply, or

(*b*) a loss would so accrue and either a smaller loss or a gain would accrue if those subsections did not apply,

and accordingly, in a case to which *paragraph (a)* or *(b)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to *subsections (2)* and *(3)*; but, in a case where this subsection would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the relevant asset was acquired by the owner for a consideration such that neither a gain nor a loss accrued to the owner on making the disposal.

(5) In relation to the disposal of an asset made in the year 1997-98, the multiplier shall be the figure mentioned in *column (2)* of the Table to this subsection opposite the mention in *column (1)* of that Table of the year of assessment in which the deductible expenditure was incurred.

Year of assessment in which deductible expenditure incurred (1)	Multiplier (2)
1974-75 … … … … … … …	6.112
1975-76 … … … … … … …	4.936
1976-77 … … … … … … …	4.253
1977-78 … … … … … … …	3.646
1978-79 … … … … … … …	3.368
1979-80 … … … … … … …	3.039
1980-81 … … … … … … …	2.631
1981-82 … … … … … … …	2.174
1982-83 … … … … … … …	1.829
1983-84 … … … … … … …	1.627
1984-85 … … … … … … …	1.477
1985-86 … … … … … … …	1.390
1986-87 … … … … … … …	1.330
1987-88 … … … … … … …	1.285
1988-89 … … … … … … …	1.261
1989-90 … … … … … … …	1.221
1990-91 … … … … … … …	1.171
1991-92 … … … … … … …	1.142
1992-93 … … … … … … …	1.101
1993-94 … … … … … … …	1.081
1994-95 … … … … … … …	1.063
1995-96 … … … … … … …	1.037
1996-97 … … … … … … …	1.016

(6) (*a*) The Revenue Commissioners shall make regulations specifying the multipliers, determined in accordance with *paragraph (b)*, in relation to the disposal of an asset made in the year 1998-99 and shall make corresponding regulations in relation to the disposal of an asset made in each subsequent year of assessment.

(*b*) The multiplier, in relation to the disposal of an asset made in the year 1998-99 or any subsequent year of assessment, shall be the quotient, rounded up to 3 decimal places, obtainable by dividing the consumer price index number relevant to the year of assessment in which the disposal is made by the consumer price index number relevant to the year of assessment in which the deductible expenditure was incurred.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(8) A capital sum which under *section 536(1)(a)* is to be deducted from any expenditure allowable as a deduction in computing a gain on the disposal of an asset shall be deducted from the sum applied in restoring the asset before *subsection (2)* is applied to the residue, if any, of that sum.

(9) An amount determined in accordance with *subsection (3)* in respect of an asset shall be reduced by any expenditure within *section*

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565 which relates to the asset and which was incurred before the 6th day of April, 1974, and *subsection (2)* shall apply to the residue of that amount.

Part disposals.

[CGTA75 s51(1) and Sch1 par6]

557.—(1) Where a person disposes of an interest or rights in or over an asset and, generally wherever on the disposal of an asset, any description of property derived from that asset remains undisposed of, the sums which under *paragraphs (a)* and *(b)* of *section 552(1)* are attributable to the asset shall be apportioned both for the purposes of the computation under this Chapter of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of.

(2) Such portion of the expenditure shall be allowable as a deduction in computing under this Chapter the amount of the gain accruing on the disposal as bears the same proportion to the total of those sums as the value of the consideration for the disposal bears to the aggregate of that value and the market value of the property which remains, and the balance of the expenditure shall be attributed to the property which remains undisposed of.

(3) Any apportionment to be made in pursuance of this section shall be made before the operation of *section 555* and, if after a part disposal there is a subsequent disposal of an asset, the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to *subsection (4)*, be those referable to the sums which under *paragraphs (a)* and *(b)* of *section 552(1)* are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under that section.

(4) This section shall not be taken as requiring the apportionment of any expenditure which on the facts is wholly attributable to the asset or part of the asset which is disposed of or wholly attributable to the asset or part of the asset which remains undisposed of.

Part disposals before 6th day of April, 1978.

[CGT(A)A78 s16 and Sch1 par10(1) and (2)]

558.—(1) Where on or after the 6th day of April, 1974, but before the 6th day of April, 1978, a person made a disposal (to which paragraph 6 of Schedule 1 to the Capital Gains Tax Act, 1975, applied) of an asset held by such person on the 6th day of April, 1974, and—

(*a*) the amount of the chargeable gain which accrued on that disposal was determined under paragraph 18 of Schedule 1 to the Capital Gains Tax Act, 1975, and

(*b*) any property derived from that asset remained undisposed of on the 6th day of April, 1978,

then, for the purpose of determining the balance of the expenditure which under *section 557* is to be attributed to the property which remains undisposed of, it shall be assumed that on the disposal the amount of the chargeable gain referred to in *paragraph (a)* had been determined, not under paragraph 18 of Schedule 1 to the Capital Gains Tax Act, 1975, but on the assumption that the asset was disposed of and immediately reacquired by the person on the 6th day of April, 1974.

(2) Where on or after the 6th day of April, 1974, but before the 6th day of April, 1978, a person made a disposal (to which paragraph 6 of Schedule 1 to the Capital Gains Tax Act, 1975, applied) of an

asset acquired by such person on a death which occurred on or after the 6th day of April, 1974, and— PT.19 S.558

(*a*) the amount of the chargeable gain which accrued on that disposal was determined on the basis that the asset had been acquired by such person on a date earlier than the date of that death, and

(*b*) any property derived from that asset remained undisposed of on the 6th day of April, 1978,

then, notwithstanding *subsection (1)*, for the purpose of determining the balance of the expenditure which under *section 557* is to be attributed to the property which remains undisposed of, it shall be assumed that on the disposal the amount of the chargeable gain referred to in *paragraph (a)* had been determined as if section 14(1) of the Capital Gains Tax Act, 1975 (as amended by section 6 of the Capital Gains Tax (Amendment) Act, 1978) or, as the case may be, section 15(4)(*b*) of the Capital Gains Tax Act, 1975 (as amended by section 7 of the Capital Gains Tax (Amendment) Act, 1978) had applied at the date of that disposal.

Assets derived from other assets.

[CGTA75 s51(1) and Sch1 par7]

559.—(1) If and in so far as, in a case where assets have been merged or divided or have changed their nature, or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in respect of the other asset under *paragraphs (a)* and *(b)* of *section 552(1)* shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

(2) The appropriate proportion shall be computed by reference to the market value at the time of disposal of the assets (including rights or interests in or over the assets) which have not been disposed of and the consideration received in respect of the assets (including rights or interests in or over the assets) disposed of.

Wasting assets.

[CGTA75 s51(1) and Sch1 pars 8 and 9]

560.—(1) In this Chapter—

''the residual or scrap value'', in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section;

''wasting asset'' means an asset with a predictable life not exceeding 50 years, but so that—

(*a*) freehold land shall not be a wasting asset whatever its nature and whatever the nature of the buildings or works on that land,

(*b*) ''life'', in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal,

(*c*) plant and machinery shall in every case be regarded as having a predictable life of less than 50 years, and in estimating that life it shall be assumed that its life will end when

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it is finally put out of use as being unfit for further use and that it will be used in the normal manner and to the normal extent and will be so used throughout its life as so estimated, and

(*d*) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Revenue Commissioners.

(2) The question as to what is the predictable life of an asset, and the question as to what is its predictable residual or scrap value, if any, at the end of that life, shall, in so far as those questions are not immediately answered by the nature of the asset, be taken in relation to any disposal of the asset as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

(3) In the computation under this Chapter of the gain accruing on the disposal of a wasting asset, it shall be assumed—

(*a*) that any expenditure attributable to the asset under *section 552(1)(a)*, after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nil at the end of its life, and

(*b*) that any expenditure attributable to the asset under *section 552(1)(b)* is written off at a uniform rate from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nil at the end of its life.

(4) Where any expenditure attributable to the asset under *section 552(1)(b)* creates or increases a residual or scrap value of the asset, the residual or scrap value to be deducted under *subsection (3)(a)* shall be the residual or scrap value so created or increased.

(5) Any expenditure written off under this section shall not be allowable as a deduction under *section 552*.

Wasting assets qualifying for capital allowances.

[CGTA75 s51(1) and Sch1 par10]

561.—(1) *Subsections (3)* to *(5)* of *section 560* shall not apply in relation to a disposal of an asset—

(*a*) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used solely for the purposes of a trade or profession and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under *paragraph (a)* or *(b)* of *section 552(1)*, or

(*b*) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

(2) In the case of the disposal of an asset which in the period of ownership of the person making the disposal has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for

part of that period, or which has otherwise qualified in part only for capital allowances— Pt.19 S.561

(*a*) the consideration for the disposal and any expenditure attributable to the asset under *paragraph (a)* or *(b)* of *section 552(1)* shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,

(*b*) the computation under this Chapter of the gain on the disposal shall be made separately in relation to the apportioned parts of the expenditure and consideration,

(*c*) *subsections (3)* to *(5)* of *section 560* shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade or profession or to the expenditure qualifying for capital allowances,

(*d*) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on that person, that apportionment shall be employed for the purposes of this section, and

(*e*) subject to *paragraph (d)*, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under *paragraph (a)*.

Contingent liabilities.

562.—(1) No allowance shall be made under *section 552*— [CGTA75 s51(1) and Sch1 par11]

(*a*) in the case of a disposal by means of assigning a lease of land or other property, for any liability remaining with or assumed by the person making the disposal by means of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease;

(*b*) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed—

(i) as vendor of land or of any estate or interest in land,

(ii) as a lessor, or

(iii) as grantor of an option binding that person to sell land or an interest in land or to grant a lease of land;

(*c*) for any contingent liability in respect of a warranty or representation made on a disposal by means of a sale or lease of any property other than land.

(2) Where it is shown to the satisfaction of the inspector that any contingent liability mentioned in *subsection (1)* has become enforceable and is being or has been enforced, such adjustment, whether by means of discharge or repayment of tax or otherwise, shall be made as may be necessary.

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Consideration due after time of disposal.

[CGTA75 s44(2); CTA76 s140(2) and Sch2 PtII par6]

563.—(1) (*a*) In the computation of a chargeable gain, consideration for the disposal shall be taken into account without any discount for postponement of the right to receive any part of the consideration and without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent.

(*b*) Where any part of the consideration taken into account in accordance with *paragraph (a)* is shown to the satisfaction of the inspector to be irrecoverable, such adjustment, whether by means of discharge or repayment of tax or otherwise, shall be made as the case may require.

(2) *Subsection (1)* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

Woodlands.

[CGTA75 s51(1) and Sch1 par12]

564.—(1) In the computation under this Chapter of the gain accruing on the disposal by an individual of woodland, there shall be excluded—

(*a*) consideration for the disposal of trees growing on the land, and

(*b*) notwithstanding *section 535(2)*, capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such land.

(2) In the computation under this Chapter of the gain, so much of the cost of woodland as is attributable to trees growing on the land shall be disregarded.

(3) References in this section to trees include references to saleable underwood.

Expenditure reimbursed out of public money.

[CGTA75 s51(1) and Sch1 par3(7)]

565.—There shall be excluded from the computation under this Chapter of a gain accruing on a disposal any expenditure which has been or is to be met directly or indirectly by any government, by any board established by statute or by any public or local authority whether in the State or elsewhere.

Leases.

[CGTA75 s51(1)]

566.—*Schedule 14* shall apply for the purposes of the Capital Gains Tax Acts.

CHAPTER 3

Assets held in a fiduciary or representative capacity, inheritances and settlements

Nominees, bare trustees and agents.

[CGTA75 s8(3), s15(10), s51(1) and Sch4 par2; FA73 s33(4) and (7)]

567.—(1) References in the Capital Gains Tax Acts to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, or would have such a right if that other person were not an infant or other person under disability, subject only to satisfying any outstanding charge, lien or right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

(2) In relation to assets held by a person (in this subsection referred to as ''the first-mentioned person'') as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled), the Capital Gains Tax Acts shall apply as if the property were vested in, and the acts of the first-mentioned person in relation to the assets were the acts of, the person or persons for whom the first-mentioned person is the nominee or trustee (acquisitions from or disposals to the first-mentioned person by that person or those persons being disregarded accordingly).

(3) Where exploration or exploitation activities are carried on by a person on behalf of the holder of a licence granted under the Petroleum and Other Minerals Development Act, 1960, the holder of the licence shall for the purpose of any assessment to capital gains tax be deemed to be the agent of that person.

(4) *Schedule 1* shall apply for the purpose of supplementing *subsection (3)*.

Liability of trustees, etc.

[CGTA75 s51(1) and Sch4 par12]

568.—(1) Capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of one or more of those trustees or personal representatives.

(2) Subject to *section 567(2)*, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of the Capital Gains Tax Acts as accruing to or chargeable on any other person, nor shall any trustee or personal representative be regarded for the purposes of those Acts as an individual.

Assets of insolvent person.

[CGTA75 s40]

569.—(1) In this section, ''deed of arrangement'' means a deed of arrangement to which the Deeds of Arrangement Act, 1887, applies.

(2) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement, the Capital Gains Tax Acts shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to such person by the bankrupt or debtor being disregarded accordingly), and tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from such trustee or assignee.

(3) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of the Capital Gains Tax Acts be regarded as held by a personal representative of the deceased, and—

(*a*) *subsection (2)* shall not apply after the death, and

(*b*) *section 573(2)* shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if the trustee or assignee were a personal representative.

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(4) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of the Capital Gains Tax Acts be regarded as held by a personal representative of the deceased, and *subsection (2)* shall not apply.

Company in liquidation.

[CGTA75 s41]

570.—Where assets of a company are vested in a liquidator under section 230 of the Companies Act, 1963, or otherwise, the Capital Gains Tax Acts shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were acts of, the company (acquisitions from or disposals to the liquidator by the company being disregarded accordingly).

Chargeable gains accruing on disposals by liquidators and certain other persons.

[FA83 s56]

571.—(1) In this section—

''accountable person'' means—

(*a*) a liquidator of a company, or

(*b*) any person entitled to an asset by means of security or to the benefit of a charge or encumbrance on an asset or, as the case may be, any person appointed to enforce or give effect to the security, charge or encumbrance;

''the company'' has the meaning assigned to it by *subsection (6)*;

''the debtor'' has the meaning assigned to it by *subsection (5)*;

''referable capital gains tax'' has the meaning assigned to it by *subsection (2)*;

''referable corporation tax'' has the meaning assigned to it by *subsection (3)*;

''relevant disposal'' has the same meaning as in *section 648*.

(2) In this section—

(*a*) in a case where no chargeable gains other than the chargeable gains mentioned in *subsection (5)(a)* (in this subsection referred to as ''the referable gains'') accrued to the debtor in the year of assessment, ''referable capital gains tax'' means the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the referable gains;

(*b*) in a case where, in addition to the referable gains, other chargeable gains accrued to the debtor in the year of assessment and, in charging all of those gains to capital gains tax without regard to *subsection (5)*, the same rate of tax would apply, and either—

(i) none of the disposals on which the chargeable gains accrued is a relevant disposal, or

(ii) each of the disposals is a relevant disposal,

''referable capital gains tax'' means an amount of tax determined by the formula—

$$\frac{A}{B} \times C$$

where—

A is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the referable gains if no other chargeable gains accrued to the debtor in the year of assessment and if no deductions or reliefs were to be allowed against the referable gains,

B is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of all chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment, if no deductions or reliefs were to be allowed against those chargeable gains, and

C is the amount of capital gains tax which apart from *subsection (5)* would be assessable on the debtor in respect of the total amount of chargeable gains, including the referable gains, which accrued to the debtor in the year of assessment;

(*c*) in any other case, ''referable capital gains tax'' means the amount of capital gains tax which apart from *subsection (5)* and taking into account—

(i) all other chargeable gains accruing to the debtor in the year of assessment, and

(ii) where appropriate, *sections 546(6)*, *601(3)* and *653*,

would be the amount of capital gains tax appropriate to the referable gains.

(3) In this section—

(*a*) in a case where no chargeable gains other than—

(i) the chargeable gains mentioned in *subsection (6)(a)* (in this subsection referred to as ''the referable gains''), or

(ii) any chargeable gains accruing on a relevant disposal,

accrued to the company in the accounting period, ''referable corporation tax'' means the amount of capital gains tax which apart from *subsection (6)* would be assessable on the company in respect of the referable gains on the assumptions that—

(I) notwithstanding any provision to the contrary in the Corporation Tax Acts, capital gains tax was to be charged in respect of the refereable gains in accordance with the Capital Gains Tax Acts, and

(II) accounting periods were years of assessment,

or, if it is less, the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period;

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(*b*) in a case where, in addition to the referable gains, other chargeable gains (not being chargeable gains accruing on a relevant disposal) accrued to the company in the accounting period and, on the assumptions made in *paragraph (a)*, in charging all of those gains to capital gains tax without regard to *subsection (6)*, the same rate of tax would apply, ''referable corporation tax'' means an amount of tax determined by the formula—

$$\frac{D}{E} \times F$$

where—

D is the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, would be assessable on the company in respect of the referable gains if no other chargeable gains accrued to the company in the accounting period and if no deductions or reliefs were to be allowed against the referable gains,

E is the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, would be assessable on the company in respect of all chargeable gains including the referable gains (but not including chargeable gains accruing on a relevant disposal) which accrued to the company in the accounting period, if no deductions or reliefs were to be allowed against those chargeable gains, and

F is the amount (in this subsection referred to as ''the notional amount'') of capital gains tax which apart from *subsection (6)* would in accordance with *section 78(2)* be calculated in relation to the company for the accounting period in respect of all chargeable gains including the referable gains or, if it is less, the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period;

(*c*) (i) in any other case, ''referable corporation tax'' means, subject to *subparagraph (ii)*, the amount of capital gains tax which, apart from *subsection (6)* and on the assumptions made in *paragraph (a)*, and taking into account—

(I) all other chargeable gains (not being chargeable gains accruing on a relevant disposal) accruing to the company in the accounting period, and

(II) where appropriate, *sections 546(6)* and *653*,

would be the amount of capital gains tax appropriate to the referable gains;

(ii) in any case in which *subparagraph (i)* applies, if the notional amount is greater than the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period, ''referable corporation tax'' shall mean an amount determined by the formula—

$$\frac{G}{H} \times K$$

where—

G is the amount which under *subparagraph (i)* would be the referable corporation tax,

H is the notional amount, and

K is the amount of corporation tax which apart from *subsection (6)* would be assessable on the company for the accounting period.

(4) (*a*) In any case where, in calculating an amount of referable capital gains tax or referable corporation tax under *subsection (2)(c)* or *(3)(c)*, deductions or reliefs were to be allowed against chargeable gains accruing in a year of assessment or in an accounting period and apart from this subsection those deductions or reliefs (or part of them) would be set against 2 or more chargeable gains chargeable at the same rate of capital gains tax, then, those deductions or reliefs (or, as the case may be, that part of them) shall, in so far as is necessary to calculate the amount of referable capital gains tax or referable corporation tax, be apportioned between the chargeable gains chargeable at the same rate in proportion to the amounts of those chargeable gains.

(*b*) In the case of chargeable gains accruing to a company (not being chargeable gains accruing on a relevant disposal), any reference in *paragraph (a)* to a rate of tax shall be construed as a reference to the rate of capital gains tax which would be applicable to those gains on the assumptions made in *subsection (3)(a)*.

(5) Where *section 537(2)* or *570* applies in respect of the disposal of an asset in a year of assessment by an accountable person, then, notwithstanding any provision of the Capital Gains Tax Acts—

(*a*) any referable capital gains tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,

(*b*) the referable capital gains tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and

(*c*) referable capital gains tax paid by the accountable person shall discharge a corresponding amount of the liability to capital gains tax, for the year of assessment in which the disposal is made, of the person (in this section referred to as ''the debtor'') who apart from this subsection is the chargeable person in relation to the disposal.

(6) Where *section 78(8)* or *537(2)* applies in respect of the disposal (not being a relevant disposal) of an asset in an accounting period of a company by an accountable person, then, notwithstanding any provision of the Corporation Tax Acts—

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(*a*) any referable corporation tax in respect of any chargeable gains which accrue on the disposal shall be assessable on and recoverable from the accountable person,

(*b*) the referable corporation tax shall be treated as a necessary disbursement out of the proceeds of the disposal and shall be paid by the accountable person out of those proceeds, and

(*c*) referable corporation tax paid by the accountable person shall discharge a corresponding amount of the liability to corporation tax, for the accounting period in which the disposal is made, of the company (in this section referred to as ''the company'') which apart from this subsection is the chargeable person in relation to the disposal.

(7) Notwithstanding any provision of the Capital Gains Tax Acts or of the Corporation Tax Acts, the amount of referable capital gains tax or referable corporation tax, as the case may be, which under this section is assessable on an accountable person in relation to a disposal, shall be recoverable by an assessment on the accountable person to income tax under Case IV of Schedule D for the year of assessment in which the disposal occurred on an amount the income tax on which at the standard rate for that year of assessment is equal to the amount of the referable capital gains tax or referable corporation tax, as the case may be.

(8) Where tax is paid by an accountable person under this section and it is established that the amount of tax paid is excessive, appropriate relief by means of repayment or otherwise shall be given to the accountable person.

(9) Subject to *subsections (5)(c)* and *(6)(c)*, nothing in this section shall affect the amount of chargeable gains on which—

(*a*) the debtor is chargeable to capital gains tax, or

(*b*) the company is chargeable to corporation tax.

Funds in court.

[CGTA75 s42]

572.—(1) In this section—

''the Accountant'' means the Accountant attached to the court or a deputy appointed by the Minister for Justice, Equality and Law Reform;

''court'' means the High Court except where the reference is to the Circuit Court;

''funds in court'' means any moneys (and investments representing such moneys), annuities, stocks, shares or other securities standing or to be placed to the account of the Accountant in the books of the Bank of Ireland or any company, and includes boxes and other effects.

(2) For the purposes of *section 567(2)*, funds in court shall be regarded as held by the Accountant as nominee for the persons entitled to or interested in the funds or, as the case may be, for their trustees.

(3) Where funds in court standing to an account in the books of the Accountant are invested or after investment are realised, the method by which the Accountant effects the investment or the realisation of investments shall not affect the question as to whether there

is for the purposes of the Capital Gains Tax Acts an acquisition or, as the case may be, a disposal of an asset representing funds in court standing to that account, and in particular there shall for those purposes be an acquisition or disposal of assets notwithstanding that the investment of funds in court standing to an account in the books of the Accountant, or the realisation of funds which have been so invested, is effected by setting off in the Accountant's accounts investment in one account against realisation of investments in another.

(4) This section shall apply with any necessary modifications to funds in the Circuit Court as it applies to funds in court.

Death.

[CGTA75 s14; CGT(A)A78 s6(1)]

573.—(1) In this section, references to assets of which a deceased person was competent to dispose are references to assets of the deceased which the deceased could if of full age and capacity have disposed of by will, assuming that all the assets were situated in the State and that the deceased was domiciled in the State, and include references to the deceased's severable share in any assets to which immediately before his or her death he or she was beneficially entitled as a joint tenant.

(2) For the purposes of the Capital Gains Tax Acts, the assets of which a deceased person was competent to dispose—

(*a*) shall be deemed to be acquired on his or her death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death; but

(*b*) shall not be deemed to be disposed of by him or her on his or her death (whether or not they were the subject of a testamentary disposition).

(3) Allowable losses sustained by an individual in the year of assessment in which he or she dies may, in so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year, and there shall be made all such amendments of assessments or repayments of tax as may be necessary to give effect to this subsection.

(4) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence and domicile at the date of death.

(5) Where any asset is acquired by a person as legatee no chargeable gain shall accrue to the personal representatives, but the legatee shall be treated as if the personal representatives' acquisition of the asset had been the legatee's acquisition of the asset.

(6) Where not more than 2 years, or such longer period as the Revenue Commissioners may by notice in writing allow, after a death any of the dispositions of the property of which the deceased was competent to dispose, whether effected by will or under the law relating to intestacies or otherwise, are varied by a deed of family

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arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposal for the purposes of the Capital Gains Tax Acts.

Trustees of settlement.

[CGTA75 s15(1), (9) and (11)]

574.—(1) (*a*) In relation to settled property, the trustees of a settlement shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees) and, subject to *paragraph (b)*, that body shall be treated as being resident and ordinarily resident in the State unless the general administration of the trusts is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State.

(*b*) A person carrying on a business which consists of or includes the management of trusts, and acting as trustees of a trust in the course of that business, shall be treated in relation to that trust as not resident in the State if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his or her death) domiciled, resident or ordinarily resident in the State and, if in such a case the trustees or a majority of them are or are treated in relation to that trust as not resident in the State, the general administration of the trust shall be treated as ordinarily carried on outside the State.

(2) Where any amount of capital gains tax assessed on the trustees or any one trustee of a settlement in respect of a chargeable gain accruing to the trustee is not paid within 6 months from the date when it becomes payable by the trustees or trustee and, before or after the expiration of that period of 6 months, the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, then, that person may, at any time within 2 years from the time when that amount of tax became payable, be assessed and charged (in the name of the trustees) to an amount of capital gains tax not exceeding the amount of capital gains tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

(3) For the purposes of this section, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another trustee or set of trustees (and in particular where settled land within the meaning of the Settled Land Act, 1882, is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

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Gifts in settlement.

575.—A gift in settlement, whether revocable or irrevocable, shall be a disposal of the entire property thereby becoming settled property notwithstanding that the donor has some interest as a beneficiary under the settlement and notwithstanding that the donor is a trustee or the sole trustee of the settlement.

[CGTA75 s15(2)]

Person becoming absolutely entitled to settled property.

576.—(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, all the assets forming part of the settled property to which the person becomes so entitled shall be deemed for the purposes of the Capital Gains Tax Acts to have been disposed of by the trustee, and immediately reacquired by the trustee in the trustee's capacity as a trustee within *section 567(2)*, for a consideration equal to their market value.

[CGTA75 s15(3) and (8)]

(2) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee, any allowable loss which has accrued to the trustee in respect of property which is, or is represented by, the property to which that person becomes so entitled (including any allowable loss carried forward to the year of assessment in which that occasion falls), being a loss which cannot be deducted from chargeable gains accruing to the trustee in that year, but before that occasion, shall be treated for the purposes of the Capital Gains Tax Acts as if it were an allowable loss accruing at that time to the person becoming so entitled, instead of to the trustee.

Termination of life interest on death of person entitled.

577.—(1) (*a*) In this section, ''life interest'', in relation to a settlement—

[CGTA75 s15(4), (5), (5A), (6) and (12); CGT(A)A78 s7(1); FA97 s73(1)]

(i) includes a right under the settlement to the income of, or the use or occupation of, settled property for the life of a person (or for the lives of persons) other than the person entitled to the right,

(ii) does not include any right which is contingent on the exercise of the discretion of the trustee or the discretion of some other person, and

(iii) does not include an annuity, notwithstanding that the annuity is payable out of or charged on settled property or the income of settled property except where some or all of the settled property is appropriated by the trustees as a fund out of which the annuity is payable and there is no right of recourse to settled property not so appropriated, or to the income of settled property not so appropriated.

(*b*) Without prejudice to *subsection (4)(b)*, where under *paragraph (a)(iii)* an annuity is to be treated as a life interest in relation to a settlement, the settled property or the part of the settled property appropriated by the trustees as a fund out of which the annuity is payable shall, while the annuity is payable and on the occasion of the death of the annuitant, be treated for the purposes of *subsection (3)* as being settled property under a separate settlement.

(2) Where by virtue of *section 576(1)* the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes absolutely

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entitled to the assets as against the trustee, then, if that occasion is the termination of a life interest by the death of the person entitled to that interest—

(*a*) no chargeable gain shall accrue on the disposal, and

(*b*) the reacquisition under that section shall be deemed to be for a consideration equal to the market value of the assets at the date of the death.

(3) On the termination of a life interest in possession in all or any part of settled property, the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of the Capital Gains Tax Acts at that time to be disposed of by the trustee, and immediately reacquired by the trustee, for a consideration equal to the whole or a corresponding part of the market value of the asset.

(4) For the purposes of *subsection (3)*—

(*a*) a life interest which is a right to part of the income of settled property shall be treated as a life interest in a corresponding part of the settled property, and

(*b*) if there is a life interest in a part of the settled property and, where that interest is a life interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the life interest subsists shall while it subsists be treated for the purposes of this subsection as being settled property under a separate settlement.

(5) (*a*) Subject to *paragraph (b)*, where—

(i) as a consequence of a termination, on the death of the person entitled to it, of a life interest in settled property, *subsection (3)* applies, and

(ii) an asset which forms the whole or any part of that settled property—

(I) is comprised in an inheritance (within the meaning of the Capital Acquisitions Tax Act, 1976) taken on the death, and

(II) is exempt from tax in relation to the inheritance under section 55 of that Act, or that section as applied by section 39 of the Finance Act, 1978,

that asset shall for the purposes of *subsection (3)*, be excluded from the assets deemed to be disposed of and immediately reacquired.

(*b*) Where, in a year of assessment, in respect of an asset an exemption from tax in relation to an inheritance referred to in *paragraph (a)* ceases to apply, then, the chargeable gain which but for *paragraph (a)* would have accrued to the trustee on the termination of the life interest in accordance with *subsection (3)* shall be deemed to accrue

to the trustee in that year of assessment and shall accordingly be included in the return required to be made by the trustee concerned under *section 951* for that year of assessment. Pt.19 S.577

Death of annuitant.

578.—*Sections 576(1)* and *577(3)* shall apply where an annuity which is not a life interest within the meaning of *section 577* is terminated by the death of the annuitant as they apply on the termination of a life interest (within the meaning of that section) by the death of the person entitled to that life interest.

[CGTA75 s15(7)]

Non-resident trusts.

579.—(1) This section shall apply as respects chargeable gains accruing to the trustees of a settlement where the trustees are not resident and not ordinarily resident in the State, and where the settlor or one of the settlors is domiciled and either resident or ordinarily resident in the State, or was domiciled and either resident or ordinarily resident in the State when such settlor made the settlement.

[CGTA75 s37]

(2) (*a*) Any beneficiary under the settlement who is domiciled and either resident or ordinarily resident in the State in any year of assessment shall be treated for the purposes of the Capital Gains Tax Acts as if an apportioned part of the amount, if any, on which the trustees would have been chargeable to capital gains tax under *section 31*, if domiciled and either resident or ordinarily resident in the State in that year of assessment, had been chargeable gains accruing to the beneficiary in that year of assessment.

(*b*) For the purposes of this section, any amount referred to in *paragraph (a)* shall be apportioned in such manner as is just and reasonable between persons having interests in the settled property, whether the interest is a life interest or an interest in reversion, and so that the chargeable gain is apportioned as near as may be according to the respective values of those interests, disregarding in the case of a defeasible interest the possibility of defeasance.

(3) For the purposes of this section—

(*a*) where in any of the 5 years ending with that in which the chargeable gain accrues a person has received a payment or payments out of the income of the settled property made in exercise of a discretion, such person shall be regarded, in relation to that chargeable gain, as having an interest in the settled property of a value equal to that of an annuity of a yearly amount equal to 20 per cent of the total of the payments so received by such person in those 5 years, and

(*b*) where a person (in this paragraph referred to as ''the recipient'') receives at any time after the chargeable gain accrues a capital payment made out of the settled property in exercise of a discretion, being a payment which represents the chargeable gain in whole or in part, then, except in so far as any part of the gain has been attributed under this section to some other person who is domiciled and resident or ordinarily resident in the State, the recipient shall, if domiciled and resident or ordinarily resident

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in the State, be treated as if the chargeable gain or, as the case may be, the part of the chargeable gain represented by the capital payment, had accrued to the recipient at the time when the recipient received the capital payment.

(4) In the case of a settlement made before the 28th day of February, 1974—

(*a*) *subsection (2)* shall not apply to a beneficiary whose interest is solely in the income of the settled property and who cannot, by means of the exercise of any power of appointment or power of revocation or otherwise, obtain for himself or herself, whether with or without the consent of any other person, any part of the capital represented by the settled property, and

(*b*) payment of capital gains tax chargeable on a gain apportioned to a beneficiary in respect of an interest in reversion in any part of the capital represented by the settled property may be postponed until that person becomes absolutely entitled to that part of the settled property, or disposes of the whole or any part of his or her interest, unless he or she can, by any means described in *paragraph (a)*, obtain for himself or herself any of it at any earlier time,

and, for the purposes of this subsection, property added to a settlement after the settlement is made shall be regarded as property under a separate settlement made at the time when the property is so added.

(5) In any case in which the amount of any capital gains tax payable by a beneficiary under a settlement in accordance with this section is paid by the trustees of the settlement, such amount shall not for the purposes of income tax or capital gains tax be regarded as a payment to such beneficiary.

(6) This section shall not apply in relation to a loss accruing to the trustees of the settlement.

CHAPTER 4

Shares and securities

Shares, securities, etc: identification.

[CGT(A)A78 s16 and Sch1 par4]

580.—(1) For the purposes of identifying shares acquired with shares subsequently disposed of, in so far as the shares are of the same class, shares acquired at an earlier time shall for the purposes of the Capital Gains Tax Acts be deemed to have been disposed of before shares acquired at a later time.

(2) Shares shall not be treated for the purposes of this section as being of the same class unless, if dealt with on a stock exchange, they would be so treated, but shall be treated in accordance with this section notwithstanding that they are identified in a different way by a disposal or by the transfer or delivery giving effect to the disposal.

(3) This section shall apply to securities as it applies to shares.

(4) This section apart from *subsection (2)* shall apply in relation to any assets as it applies in relation to shares where the assets are of a

nature to be dealt in without identifying the particular assets disposed of or acquired. PT.19 S.580

(5) (*a*) This subsection shall apply in relation to the disposal of any assets to which paragraph 13 of Schedule 1 to the Capital Gains Tax Act, 1975, applied, where—

(i) any such assets were on the 6th day of April, 1978, comprised in a holding of the kind referred to in that paragraph,

(ii) the holding consisted of assets acquired on different dates, and

(iii) before the 6th day of April, 1978, there had been a disposal of assets which if that disposal had not taken place would have been comprised in the holding on that date.

(*b*) For the purposes of applying *subsection (1)* in relation to each disposal to which this subsection applies—

(i) shares acquired on different dates shall be treated as if they were distinguishable parts of a single asset (in this subsection referred to as ''the holding'') acquired respectively on the separate dates on which they were acquired and for the consideration for which they were acquired, and

(ii) it shall be assumed that, on each occasion before the 6th day of April, 1978, on which a disposal was made of shares in the holding, each of the distinguishable parts of the holding as it existed immediately before the disposal was reduced, both as regards the number of shares comprised in that part and the expenditure attributable to that part under *paragraphs (a)* and *(b)* of *section 552(1)*, in the same proportion as the number of shares so disposed of bears to the number of shares comprised in the holding immediately before that disposal, and

(iii) the number of shares comprised in each such part on the 6th day of April, 1978, and the expenditure attributable (apart from *section 556*) to that part under *paragraphs (a)* and *(b)* of *section 552(1)* shall, in relation to a disposal made on or after that date, be the number and expenditure respectively determined in accordance with this subsection.

(*c*) Nothing in this subsection shall affect the computation of any chargeable gain or allowable loss in relation to any disposal of assets made before the 6th day of April, 1978.

(6) This section shall apply subject to *section 581*.

581.—(1) For the purposes of the Capital Gains Tax Acts, where the same person in the same capacity disposes of shares of the same class as shares which such person acquired within 4 weeks preceding the disposal, the shares disposed of shall be identified with the shares so acquired within those 4 weeks.

Disposals of shares or securities within 4 weeks of acquisition.

[CGTA75 s51(1) and Sch1 par14(1) to (5)]

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(2) For the purposes of the Capital Gains Tax Acts, where the quantity of shares of the same class disposed of exceeds the quantity of shares of the same class acquired within the period of 4 weeks preceding the disposal, the excess shall be identified with shares of the same class acquired otherwise than within the period of 4 weeks.

(3) Where a loss accrues to a person on the disposal of shares and such person reacquires shares of the same class within 4 weeks after the disposal, that loss shall not be allowable under *section 538* or *546* otherwise than by deduction from a chargeable gain accruing to such person on the disposal of the shares reacquired; but, if the quantity of shares so reacquired is less than the quantity so disposed of, such proportion of the loss shall be allowable under *section 538* or *546* as bears the same proportion to the loss on the disposal as the quantity not reacquired bears to the quantity disposed of.

(4) In the case of a man and his wife living with him—

(*a*) *subsections (1)* and *(2)* shall, with the necessary modifications, apply where shares are acquired by one of them and shares of the same class are disposed of within 4 weeks by the other, and

(*b*) *subsection (3)* shall, with the necessary modifications, apply also where a loss on the disposal accrues to one of them and the acquisition after the disposal is made by the other.

(5) This section shall apply to securities as it applies to shares.

Calls on shares.

[CGT(A)A78 s16 and Sch1 par3]

582.—Where, as respects an issue of shares in or debentures of a company, a person gives any consideration on a date which is more than 12 months after the date on which the shares or debentures were allotted, the consideration shall, in the computation of a gain accruing to such person on a disposal of the shares or debentures, be deemed for the purposes of *section 556* to be expenditure incurred on the date on which the consideration was given.

Capital distributions by companies.

[CGTA75 s51(1) and Sch2 par1]

583.—(1) In this section, ''capital distribution'' means any distribution from a company (including a distribution in the course of dissolving or winding up the company) in money or money's worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

(2) Where a person receives or becomes entitled to receive in respect of shares in a company any capital distribution from the company (other than a new holding within the meaning of *section 584*), such person shall be treated for the purposes of the Capital Gains Tax Acts as if such person had in consideration of that capital distribution disposed of an interest in the shares.

Reorganisation or reduction of share capital.

[CGTA75 s51(1) and Sch2 par2(1) to (7) and (9); CGT(A)A78 s16 and Sch1 par5]

584.—(1) In this section—

''new holding'', in relation to any original shares, means the shares in and debentures of the company which as a result of the reorganisation or reduction of capital represent the original shares (including such, if any, of the original shares as remain);

''original shares'' means shares held before and concerned in the reorganisation or reduction of capital;

references to a reorganisation of a company's share capital include— PT.19 S.584

(*a*) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company, and

(*b*) any case where there is more than one class of shares and the rights attached to shares of any class are altered;

references to a reduction of share capital do not include the paying off of redeemable share capital and, where shares in a company are redeemable by the company otherwise than by the issue of shares or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

(2) This section shall apply for the purposes of the Capital Gains Tax Acts in relation to any reorganisation or reduction of a company's share capital.

(3) Subject to *subsections (4)* to *(8)*, a reorganisation or reduction of a company's share capital shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it; but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

(4) (*a*) Where on a reorganisation or reduction of a company's share capital a person gives or becomes liable to give any consideration for such person's new holding or any part of it, that consideration shall, in the computation of a gain accruing to such person on a disposal of the new holding or any part of it, be deemed for the purposes of *section 556* to be expenditure incurred on the date the consideration was given and, if the new holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.

(*b*) Notwithstanding *paragraph (a)*, there shall not be treated as consideration given for the acquisition of the new holding—

(i) any surrender, cancellation or other alteration of the original shares or of the rights attached to the original shares, or

(ii) any consideration consisting of any application, in paying up the shares or debentures or any part of them, of any assets of the company, or of any dividend or other distribution declared out of those assets but not made;

but, if *section 816* applies in relation to the issue of any of the shares, the sum in cash which the person would have received if the person had not exercised the option to receive additional share capital instead of a sum in cash shall be treated for the purposes of this subsection as consideration given for those shares.

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(5) Where on a reorganisation or reduction of a company's share capital a person receives (or is deemed to receive), or becomes entitled to receive, any consideration other than the new holding for the disposal of an interest in the original shares, and in particular—

(*a*) where under *section 583* such person is to be treated as if such person had in consideration of a capital distribution disposed of an interest in the original shares, or

(*b*) where such person receives (or is deemed to receive) a consideration from other shareholders in respect of a surrender of rights derived from the original shares,

such person shall be treated as if the new holding resulted from such person having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the new holding being treated in accordance with *subsection (3)* as the same asset).

(6) Where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding, it is necessary to apportion the cost of acquisition of any of the original shares between the part which is disposed of and the part which is retained, the apportionment shall be made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the new holding as may be required to offset any liability attaching to the new holding but forming part of the cost to be apportioned), and any corresponding apportionment for the purposes of *subsection (5)* shall be made in the like manner.

(7) Notwithstanding *subsection (6)*—

(*a*) where a new holding—

(i) consists of more than one class of shares in or debentures of the company and one or more of those classes is of shares or debentures which, at any time not later than the end of the period of 3 months beginning on the date on which the reorganisation or reduction of capital took effect, or of such longer period as the Revenue Commissioners may by notice in writing allow, had quoted market values on a recognised stock exchange in the State or elsewhere, or

(ii) consists of more than one class of rights of unit holders and one or more of those classes is of rights the prices of which were published regularly by the managers of the scheme at any time not later than the end of that period of 3 months (or longer if so allowed), and

(*b*) where, for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or securities or rights of unit holders forming part of a new holding of the kind referred to in *paragraph (a)*, it is necessary to apportion costs of acquisition between the part that is disposed of and the part that is retained,

then, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first

day (whether that day fell before the reorganisation or reduction of capital took effect or later) on which market values or prices were quoted or published for the shares, debentures or rights mentioned in *paragraph (a)* or *(b)* (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned) and, for the purposes of this subsection, the day on which a reorganisation of share capital involving the allotment of shares or debentures or unit holders' rights takes effect shall be the day following the day on which the right to renounce any allotment expires.

(8) Where a person receives or becomes entitled to receive in respect of any shares in or debentures of a company a provisional allotment of shares in or debentures of the company and such person disposes of such person's rights, *section 583* shall apply as if the amount of the consideration for the disposal were a capital distribution received by such person from the company in respect of the first-mentioned shares, and as if such person had, instead of disposing of the rights, disposed of an interest in those shares.

Conversion of securities.

[CGTA75 s51(1) and Sch2 par3]

585.—(1) In this section—

''conversion of securities'' includes—

(*a*) a conversion of securities of a company into shares in the company,

(*b*) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and

(*c*) any exchange of securities effected in pursuance of any enactment which provides for the compulsory acquisition of any shares or securities and the issue of securities or other securities instead;

''security'' includes any loan stock or similar security, whether of any government or of any public or local authority or of any company and whether secured or unsecured but excluding securities within *section 607*.

(2) *Section 584* shall apply with any necessary modifications in relation to the conversion of securities as it applies in relation to the reorganisation or reduction of a company's share capital.

Company amalgamations by exchange of shares.

[CGTA75 s51(1) and Sch2 par4; FA82 s63(1)(a) and (2)]

586.—(1) Subject to *section 587*, where a company issues shares or debentures to a person in exchange for shares in or debentures of another company, *section 584* shall apply with any necessary modifications as if the 2 companies were the same company and the exchange were a reorganisation of its share capital.

(2) This section shall apply only where—

(*a*) the company issuing the shares or debentures has, or in consequence of the exchange will have, control of the other company, or

(*b*) the first-mentioned company issues the shares or debentures in exchange for shares as the result of a general offer made to members of the other company or any class of them (with or without exceptions for persons connected

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with the first-mentioned company), the offer being made in the first instance on a condition such that if it were satisfied the first-mentioned company would have control of the other company.

(3) (*a*) In this subsection, ''shares'' includes stock, debentures and any interests to which *section 587(3)* applies and also includes any option in relation to such shares.

(*b*) This section shall not apply to the issue by a company of shares in the company by means of an exchange referred to in *subsection (1)* unless it is shown that the exchange is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

Company reconstructions and amalgamations.

[CGTA75 s51(1) and Sch2 par5; FA82 s63(1)(b) and (2)]

587.—(1) In this section, ''scheme of reconstruction or amalgamation'' means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise.

(2) Where under any arrangement between a company and the persons holding shares in or debentures of the company or any class of such shares or debentures, being an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation, another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of the first-mentioned shares or debentures, but the first-mentioned shares or debentures are either retained by those persons or cancelled, then, those persons shall be treated as exchanging the first-mentioned shares or debentures for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue), and accordingly *section 586(1)* shall apply to such exchange of shares or debentures.

(3) *Subsection (2)* shall apply in relation to a company which has no share capital as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company, and *sections 584* and *586* shall apply accordingly.

(4) (*a*) In this subsection, ''shares'' has the same meaning as in *section 586(3)*.

(*b*) This section shall not apply to the issue by a company of shares in the company under a scheme of reconstruction or amalgamation referred to in *subsection (2)* unless it is shown that the reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

588.—(1) In this section—

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Demutualisation of assurance companies.

[CGTA75 s51(1) and Sch2 par5A; FA97 s70]

''assurance company'' has the same meaning as in section 3 of the Insurance Act, 1936;

''free shares'', in relation to a member of the assurance company, means any shares issued by the successor company to that member in connection with the arrangement but for no new consideration;

''member'', in relation to the assurance company, means a person who is or has been a member of it, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

''new consideration'' means consideration other than—

(*a*) consideration provided directly or indirectly out of the assets of the assurance company or the successor company, or

(*b*) consideration derived from a member's shares or other rights in the assurance company or the successor company.

(2) This section shall apply as on and from the 21st day of April, 1997, in respect of an arrangement between a company and its members, being an arrangement to which *subsection (2)* of *section 587* applies by virtue of *subsection (3)* of that section, and where the company is an assurance company which carries on a mutual life business.

(3) Where in connection with the arrangement there is conferred on a member of the assurance company concerned any rights—

(*a*) to acquire shares in another company (in this section referred to as the ''successor company'') in priority to other persons,

(*b*) to acquire shares in the successor company for consideration of an amount or value lower than the market value of the shares, or

(*c*) to free shares in the successor company,

then, any such rights so conferred on a member shall be regarded for the purposes of capital gains tax as an option (within the meaning of *section 540*) granted to and acquired by such member for no consideration and having no value at the time of that grant and acquisition.

(4) Where in connection with the arrangement shares in the successor company are issued to a member of the assurance company concerned, and such shares are treated under *section 587* as having been exchanged by the member for the interest in the company possessed by the member, those shares shall, notwithstanding *section 584*, be regarded for the purposes of *section 552(1)*—

(*a*) as having been issued to the member for a consideration given by the member of an amount or value equal to the amount or value of any new consideration given by the member for the shares or, if no new consideration is given, as having been issued for no consideration, and

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(*b*) as having, at the time of their issue to the member, a value equal to the amount or value of the new consideration so given or, if no new consideration is given, as having no value;

but this subsection is without prejudice to the operation where applicable of *subsection (3)*.

(5) *Subsection (6)* shall apply in any case where—

(*a*) in connection with the arrangement, shares in the successor company are issued by that company to trustees on terms which provide for the transfer of those shares to members of the assurance company concerned for no new consideration, and

(*b*) the circumstances are such that in the hands of the trustees the shares constitute settled property.

(6) (*a*) Where this subsection applies, then, for the purposes of capital gains tax—

(i) the shares shall be regarded as acquired by the trustees for no consideration,

(ii) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by the member for no consideration and as having no value at the time of its acquisition, and

(iii) where on the occasion of a member becoming absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on the member becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within *section 567(2)*, for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees, and accordingly *section 576(1)* shall not apply in relation to that occasion.

(*b*) Reference in *paragraph (a)* to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include reference to the case where the member would become so entitled but for being a minor or otherwise under a legal disability.

Shares in close company transferring assets at undervalue.

[CGTA75 s35(1) to (3) and (5); CTA76 s140(2) and Sch 2 PtII par3(1)]

589.—(1) Where a close company transfers an asset to any person otherwise than by means of a bargain made at arm's length and for a consideration of an amount or value less than the market value of the asset, an amount equal to the difference shall be apportioned among the issued shares of the company, and the holders of those shares shall be treated in accordance with *subsections (2)* and *(3)*.

(2) For the purposes of the computation of a chargeable gain accruing on the disposal of any of those shares by the person owning them on the date of transfer, an amount equal to the amount so apportioned to that share shall be excluded from the expenditure allowable as a deduction under *section 552(1)(a)* from the consideration for the disposal.

(3) Where the person owning any of those shares at the date of transfer is itself a close company, an amount equal to the amount apportioned to the shares so owned under *subsection (1)* to that close company shall be apportioned among the issued shares of that close company, and the holders of those shares shall be treated in accordance with *subsection (2)*, and so on through any number of close companies. Pt.19 S.589

(4) This section shall apply to a company within *section 590* as it applies to a close company.

Attribution to shareholders of chargeable gains accruing to non-resident company.

[CGTA75 s36; CTA76 s129(6)(c) and (7), s140(2) and s159 and Sch2 PtII pars4 and 5]

590.—(1) This section shall apply as respects a chargeable gain accruing to a company—

(*a*) which is not resident in the State, and

(*b*) which would be a close company if it were resident in the State.

(2) Subject to this section, any person who at the time when the chargeable gain accrues to the company—

(*a*) is resident or ordinarily resident in the State,

(*b*) if an individual, is domiciled in the State, and

(*c*) holds shares in the company,

shall be treated for the purposes of the Capital Gains Tax Acts as if a part of the chargeable gain had accrued to that person.

(3) The part of the chargeable gain referred to in *subsection (2)* shall be equal to the proportion of the assets of the company to which that person would be entitled on a liquidation of the company at the time when the chargeable gain accrues to the company.

(4) This section shall not apply in relation to—

(*a*) any amount in respect of the chargeable gain which is distributed, whether by means of dividend or distribution of capital or on the dissolution of the company, to persons holding shares in the company or to creditors of the company within 2 years from the time when the chargeable gain accrued to the company,

(*b*) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used only for the purposes of a trade carried on by the company wholly outside the State,

(*c*) a chargeable gain accruing on the disposal of currency or of a debt within *section 541(6)*, where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the State, or

(*d*) a chargeable gain in respect of which the company is chargeable to capital gains tax by virtue of *subsection (3)* or *(7)* of *section 29* or to corporation tax by virtue of *section 25(2)(b)*.

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(5) *Subsection (4)(a)* shall not prevent the making of an assessment in pursuance of this section but, if by virtue of *subsection (4)(a)* this section is excluded, all such adjustments, whether by means of repayment or discharge of tax or otherwise, shall be made as will give effect to *subsection (4)(a)*.

(6) The amount of capital gains tax paid by a person in pursuance of *subsection (2)* (in so far as not reimbursed by the company) shall be allowable as a deduction in the computation under the Capital Gains Tax Acts of a gain accruing on the disposal by the person of the shares by reference to which the tax was paid.

(7) To the extent that it would reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment, this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person, and, subject to this subsection, this section shall not apply in relation to a loss accruing to the company.

(8) Where the person owning any of the shares in the company at the time when the chargeable gain accrued to the company is itself a company which is not resident in the State but which would be a close company if it were resident in the State, an amount equal to the amount apportioned under *subsection (3)* out of the chargeable gain to the shares so owned shall be apportioned among the issued shares of the second-mentioned company, and the holders of those shares shall be treated in accordance with *subsection (2)*, and so on through any number of companies.

(9) Where any tax payable by any person by virtue of *subsection (2)* is paid by the company to which the chargeable gain accrues, or in a case under *subsection (8)* is paid by any such other company, the amount so paid shall not, for the purposes of income tax or for the purposes of the Capital Gains Tax Acts, be regarded as a payment to the person by whom the tax was originally payable.

(10) Where any tax payable by any company by virtue of *subsection (2)* is paid by the company to which the chargeable gain accrues, or in a case under *subsection (8)* is paid by any such other company, the amount so paid shall not for the purposes of corporation tax be regarded as a payment to the company by which the tax was originally payable.

(11)(*a*) In this subsection—

"group" shall be construed in accordance with *subsections (1)* (excluding *paragraph (a)*), *(3)* and *(4)* of *section 616*;

"non-resident group" of companies—

(i) in the case of a group none of the members of which is resident in the State, means that group, and

(ii) in the case of a group 2 or more members of which are not resident in the State, means the members not resident in the State.

(*b*) For the purposes of this section—

(i) *sections 617* to *620* shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to

companies resident in the State which are members of a group of companies, and

(ii) *sections 623* and *625* shall apply as if for any reference in those sections to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the State.

Relief for individuals on certain reinvestment.

[FA93 s27(1) to (5) (apart from proviso to (5)) and (6) to (13); FA94 s65(b); FA95 s74(1);FA96 s62(1); FA97 s75(1)]

591.—(1) In this section—

''director'' has the same meaning as in *section 116*;

''eligible shares'' and ''ordinary shares'' have the same meanings respectively as in *section 488*;

''full-time director'', ''full-time employee'', ''part-time director'' and ''part-time employee'' have the same meanings respectively as in *section 250*;

''holding company'' means a company whose business consists wholly or mainly in the holding of shares in, or securities of, one or more companies which are trading companies and which are its 51 per cent subsidiaries;

''material disposal'' has the meaning assigned to it by *subsection (5)*;

''ordinary share capital'' has the same meaning as in *section 2*;

''the original holding'' has the meaning assigned to it by *subsection (2)*;

''qualifying company'' has the meaning assigned to it by *subsection (7)*;

''qualifying investment'' has the meaning assigned to it by *subsection (6)*;

''the reinvestor'' has the meaning assigned to it by *subsection (2)*;

''the specified period'' has the meaning assigned to it by *subsection (6)(b)*;

''trade'' includes a profession, and ''trading company'', ''trading group'', ''qualifying trade'' (within the meaning of *subsection (8)*) and ''qualifying trading operations'' (within the meaning of that subsection) shall be construed accordingly;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

''trading group'' means a holding company and one or more trading companies which are 51 per cent subsidiaries of the holding company;

''unquoted company'' means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange;

''51 per cent subsidiary'' has the meaning assigned to it by *section 9*.

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(2) (*a*) Subject to this section, where the consideration which an individual (in this section referred to as ''the reinvestor'') obtains for any material disposal by him or her of shares in or securities of any company (in this section referred to as ''the original holding'') is applied by him or her within the period of 3 years from the date of that disposal in acquiring a qualifying investment, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the qualifying investment.

(*b*) Notwithstanding *paragraph (a)*, where—

(i) the disposal of the qualifying investment is a material disposal for the purposes of this section, and

(ii) the consideration for that disposal is applied by the reinvestor within the period of 3 years from the date of that disposal in acquiring another qualifying investment,

the reinvestor shall be treated as if the chargeable gain accruing on the disposal of the original holding did not accrue until he or she disposes of the other qualifying investment and any further qualifying investment which is acquired in a similar manner.

(3) (*a*) Where an individual is not entitled to be treated in accordance with *subsection (2)* solely by reason of not having satisfied the requirements of either or both *paragraphs (a)* and *(e)* of *subsection (6)*, and—

(i) all the other requirements of this section have been satisfied,

(ii) the capital gains tax on the disposal of the original holding has been paid in full, and

(iii) the individual has, throughout a period of 2 years beginning within the specified period, been a full-time employee or a full-time director of the qualifying company,

then, the individual—

(I) shall be entitled on making a claim in that behalf to such repayment of capital gains tax as would secure that the tax which is ultimately borne by the individual does not exceed the tax which would have been borne by the individual if he or she had been entitled to be treated in accordance with *subsection (2)*, and

(II) shall be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the disposal of the original holding did not accrue until the individual disposes of the qualifying investment, and *subsection (2)(b)* shall apply for the purposes of this subsection as it applies for the purposes of *subsection (2)*.

(*b*) No repayment of tax under this subsection shall carry interest. PT.19 S.591

(4) *Subsection (2)* shall not apply if part only of the amount or value of the consideration for the material disposal of the original holding is applied, within the period of 3 years from the date of that disposal, in acquiring a qualifying investment but, if all of the amount of that consideration except for a part which is less than the amount of the gain accruing on the disposal is so applied, the reinvestor shall, on making a claim in that behalf, be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal were reduced to the amount of the consideration not applied in acquiring a qualifying investment, and the balance of the gain shall be treated as if it did not accrue until the reinvestor disposes of the qualifying investment.

(5) For the purposes of this section, the disposal of shares in or securities of a company shall be a material disposal if—

(*a*) throughout the period of 3 years ending with the date of the disposal, or

(*b*) in a case where the company commenced to trade at any time in the period mentioned in *paragraph (a)*, throughout the period beginning at that time and ending with the date of the disposal,

the following conditions are satisfied—

(i) the company has been a trading company or a holding company, and

(ii) the reinvestor has been a full-time employee, part-time employee, full-time director or part-time director of the company or, if that company is a member of a trading group, of one or more companies which are members of the trading group.

(6) For the purposes of this section, an individual shall be regarded as acquiring a qualifying investment where he or she acquires any eligible shares in a qualifying company if—

(*a*) he or she holds not less than 5 per cent of the ordinary share capital of the company at any time in the period (in this subsection referred to as ''the initial period'') beginning on the date of the acquisition of the eligible shares and ending on the date which is one year after the date of the disposal of the original holding,

(*b*) he or she holds not less than 15 per cent of the ordinary share capital of the company at any time in the period (in this section referred to as ''the specified period'') beginning on the date of the acquisition of the eligible shares and ending on the date which is 3 years after the date of the disposal of the original holding,

(*c*) within the specified period, the company uses the money raised through the issue of the eligible shares for the purposes of enabling it, or enlarging its capacity, to undertake qualifying trading operations (within the meaning of *subsection (8)*),

(*d*) the company is not—

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(i) the company in which the original holding has subsisted, or

(ii) a company that was a member of the same trading group as that company,

and

(*e*) he or she becomes at any time within the initial period, and is throughout the period beginning at that time and—

(i) ending at the end of the specified period, or

(ii) in a case where the company is wound up or dissolved without winding up and the conditions mentioned in *subsection (7)(d)* are satisfied, ending at the time of the commencement of the winding up or dissolution of the company,

a full-time employee or a full-time director of the company.

(7) (*a*) For the purposes of this section and subject to *paragraphs (b)* to *(d)*, a company shall be a qualifying company if it is incorporated in the State and if—

(i) it is throughout the specified period—

(I) an unquoted company resident in the State and not resident elsewhere, and

(II) a company which exists wholly for the purposes of carrying on wholly or mainly in the State of one or more qualifying trades,

and

(ii) it is not at any time in the specified period—

(I) under the control of another company (or of another company and any person connected with that other company), or

(II) without being under the control of another company, a 51 per cent subsidiary of that other company.

(*b*) A company shall be deemed not to have ceased to be a qualifying company solely by virtue of shares in the company commencing, at any time in the specified period, to be quoted on the market known as the Developing Companies Market of the Irish Stock Exchange.

(*c*) A company shall cease to be a qualifying company if at any time in the specified period a resolution is passed, or an order is made, for the winding up of the company (or in the case of a winding up otherwise than under the Companies Act, 1963, any other act is done for the like purpose) or the company is dissolved without winding up.

(*d*) Notwithstanding *paragraph (c)*, a company shall be deemed not to have ceased to be a qualifying company

solely by virtue of the application of that paragraph where— Pt.19 S.591

(i) it is shown that the winding up or dissolution is for bona fide commercial reasons and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of income tax, corporation tax or capital gains tax, and

(ii) the company's net assets, if any, are distributed to its members within 3 years from the commencement of the dissolution or the winding up.

(8) (*a*) In this subsection, ''qualifying trading operations'', in relation to a trade, means all the operations of the trade excluding those of dealing in shares, securities, land, currencies, futures or traded options.

(*b*) A trade shall be a qualifying trade for the purposes of *subsection (7)* if throughout the specified period the trade—

(i) is conducted on a commercial basis and with a view to the realisation of profits, and

(ii) consists wholly or mainly of qualifying trading operations,

and a trade which during the specified period consists partly of qualifying trading operations and partly of other trading operations shall be regarded for the purposes of this subsection as a trade which consists wholly or mainly of qualifying trading operations only if the total amount receivable in the specified period by the company carrying on the trade from sales made and services rendered in the course of qualifying trading operations is not less than 75 per cent of the total amount receivable by the company from all sales made and services rendered in the course of the trade in the specified period.

(9) A claim for relief under this section may be made after the making of a material disposal and the acquisition of eligible shares in a qualifying company if all the conditions for the relief are or will be satisfied, but the relief shall be withdrawn if, by reason of the subsequent happening of any event or failure of an event to happen which at the time the relief was claimed was expected to happen, the individual by whom the relief was claimed is not entitled to the relief so claimed.

(10) The withdrawal of relief under *subsection (9)* shall be made—

(*a*) for the year of assessment in which the happening or failure to happen, as the case may be, of the event giving rise to the withdrawal of the relief occurred, and

(*b*) in accordance with *subsection (11)*,

and both—

(i) details of the happening or the failure to happen, as the case may be, of the event giving rise to the withdrawal of relief, and

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(ii) the amount to be treated as a gain under *subsection (11)*,

shall be included in the return required to be made by the individual concerned under *section 951* for that year of assessment.

(11) (*a*) Notwithstanding any other provision of the Capital Gains Tax Acts, where relief is to be withdrawn under *subsection (9)* for any year of assessment, such amount (in this subsection referred to as ''the relevant amount'') of the chargeable gain which accrued to the reinvestor on the disposal of the original holding as was treated under *subsection (2)* or *(4)* as not accruing at that time—

(i) reduced in accordance with *paragraph (b)*, and

(ii) increased in accordance with *paragraph (c)*,

shall be treated as a gain which accrued in that year of assessment.

(*b*) The amount by which the relevant amount is to be reduced under *paragraph (a)(i)* is an amount equal to the aggregate of—

(i) to the extent that such excess has not been deducted in years of assessment subsequent to the year of assessment in which the disposal of the original holding occurred, the excess of the amount of the losses which would have been deducted under *section 31* in the year of assessment in which the disposal of the original holding occurred, if relief under this section had not been claimed, over the amount of such losses which were so deducted in that year, and

(ii) any amount of chargeable gains in the year of assessment in which the disposal of the original holding occurred in respect of which the reinvestor would not by virtue of *section 601* have been charged to capital gains tax if relief under this section had not been claimed.

(*c*) The amount by which the relevant amount is to be increased under *paragraph (a)(ii)* is an amount determined by the formula—

$$G \times \frac{R}{100} \times M$$

where—

G is the relevant amount reduced in accordance with *paragraph (b)*,

R is the rate per cent specified in *section 1080(1)*, and

M is the number of months in the period beginning on the date on which capital gains tax for the year of assessment in which the disposal of the original holding occurred was due and payable and ending on the date on which capital gains tax for the year of assessment for which the withdrawal of relief is to be made is due and payable.

(12) A chargeable gain or the balance of a chargeable gain which under *subsection (2)* or *(4),* as may be appropriate, is treated as accruing at a date later than the date of the disposal on which it accrued shall not be so treated for the purposes of *section 556*. Pt.19 S.591

(13) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of any assets some or part of which are shares or other securities to the acquisition or disposal of which a claim under this section relates and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

(14) This section shall not apply unless the acquisition of a qualifying investment was made for bona fide commercial reasons and not wholly or partly for the purposes of realising a gain from the disposal of the qualifying investment.

Reduced rate of capital gains tax on certain disposals of shares by individuals.

[FA94 s66(1) to (8); FA96 s63(1); FA97 s76, s146(1) and Sch9 PtI par 18(3)]

592.—(1) In this section—

''disposal'' does not include a relevant disposal within the meaning of *section 648*;

''ordinary share capital'' has the same meaning as in *section 2*;

''ordinary shares'' means shares forming part of a company's ordinary share capital;

''period of ownership'', in relation to an individual making a disposal of qualifying shares, means the individual's period of continuous ownership of the shares in the same capacity ending on the date of such disposal and, for the purposes of this definition, where the shares were acquired by the individual on the death of that individual's spouse so that the individual's period of ownership would apart from this definition be treated as having commenced on the date of that death, the individual's period of ownership shall be deemed to be extended to include the individual's spouse's period of ownership ending on that date;

''qualifying company'' shall be construed in accordance with *subsection (2)*;

''qualifying shares'', in relation to a company, means ordinary shares of the company which are fully paid up and which carry no present or future preferential rights to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed;

''qualifying trade'' shall be construed in accordance with *subsection (4)*;

''qualifying trading operations'', in relation to a trade, means all the operations of the trade excluding those of dealing in shares, securities, land, currencies, futures or traded options;

''the specified period'', in relation to the disposal of qualifying shares, means the period of 3 years immediately preceding the date of the disposal of those shares;

''trade'' includes a profession, and ''qualifying trade'' and ''qualifying trading operations'' shall be construed accordingly;

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''unquoted company'' means a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market.

(2) For the purposes of this section, a company shall be a qualifying company in relation to the disposal of qualifying shares where—

(*a*) at the date of acquisition of those shares, it is an unquoted company which is resident in the State and not resident elsewhere and which has an issued share capital the market value of which is not more than £25,000,000, and

(*b*) throughout the specified period, it is a company which is resident in the State and not resident elsewhere and—

(i) which exists wholly or mainly for the purposes of the carrying on of one or more qualifying trades, or

(ii) the business of which consists—

(I) wholly or mainly of the holding of shares in one or more connected companies, or

(II) wholly or mainly of both the holding of such shares and the carrying on of one or more qualifying trades.

(3) (*a*) A company shall be regarded as having satisfied the condition referred to in *subsection (2)(b)(i)* only if throughout the specified period not less than 75 per cent of the market value of all the issued share capital of the company derives from the carrying on by the company of one or more qualifying trades.

(*b*) A company shall be regarded as having satisfied the condition referred to in *clause (I)* or *(II)*, as the case may be, of *subsection (2)(b)(ii)* only if throughout the specified period not less than 75 per cent of the market value of all the issued share capital of the company derives from the carrying on of one or more qualifying trades by the connected companies or, as the case may be, by the company and the connected companies.

(*c*) In a case where a connected company (in this paragraph referred to as ''the first-mentioned company'') is a company whose business consists of the holding of shares in one or more companies, references in *paragraph (b)* to the connected companies shall be construed as including references to the companies which are connected with the first-mentioned company.

(4) For the purposes of this section, a trade shall be a qualifying trade if throughout the specified period it consists of qualifying trading operations and, where during that period a trade consists partly of qualifying trading operations and partly of other trading operations, the part of the trade which consists of other trading operations shall be treated as a separate trade.

(5) For the purposes of this section, where a company (in this subsection referred to as ''the first-mentioned company'') holds shares in another company, that other company shall be regarded as connected with the first-mentioned company if—

(*a*) at the date of the acquisition of those shares by the first-mentioned company it was an unquoted company, PT.19 S.592

(*b*) it is resident in the State and not resident elsewhere, and

(*c*) not less than 20 per cent of the total voting rights in the company are exercisable by the first-mentioned company.

(6) As respects chargeable gains accruing to an individual on the disposal of qualifying shares in a qualifying company in a case where the individual's period of ownership of those shares is not less than 3 years, *section 28(3)* shall apply as if the reference in that section to 40 per cent were a reference to 26 per cent.

(7) (*a*) In this subsection and in *subsection (8)*, ''original shares'' and ''new holding'' have the same meanings respectively as in *section 584*.

(*b*) If the time when an individual acquires qualifying shares would be determined under *section 584*, *585*, *586* or *587*, it shall be determined in the same way for the purposes of this section where the following conditions are satisfied—

(i) both the original shares and the new holding constitute qualifying shares, and

(ii) the individual is not treated under *section 584(4)* as giving or becoming liable to give any consideration, other than the original shares, for the acquisition of the new holding.

(8) (*a*) In a case where *subsection (7)(b)* applies and the new holding is held for a period of not less than 3 years, *subsection (2)* shall apply as if—

(i) in *paragraph (a)* of that subsection ''at the date of acquisition of the original shares'' were substituted for ''at the date of acquisition of those shares'',

(ii) where the company in which the new holding subsists is not the company in which the original shares subsisted, in *paragraph (a)* of that subsection ''the company in which the original shares subsisted is'' were substituted for ''it is'', and

(iii) in *paragraph (b)* of that subsection ''the company in which the new holding subsists is'' were substituted for ''it is''.

(*b*) In a case where *subsection (7)(b)* applies and the new holding is held for a period of less than 3 years, *subsection (2)* shall apply—

(i) as if in *paragraph (a)* of that subsection ''at the date of acquisition of the original shares'' were substituted for ''at the date of acquisition of those shares'', and

(ii) where the company in which the new holding subsists is not the company in which the original shares subsisted as if—

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(I) in *paragraph (a)* of that subsection ''the company in which the original shares subsisted is'' were substituted for ''it is'',

(II) in *paragraph (b)* of that subsection ''throughout that part of the specified period commencing on the date of the acquisition of the new holding, the company in which the new holding subsists is'' were substituted for ''throughout the specified period, it is'', and

(III) the conditions referred to in *paragraph (b)* of that subsection applied also to the company in which the original shares subsisted but only in relation to the part of the specified period which does not include the part of that period mentioned in *clause (II)*.

CHAPTER 5

Life assurance and deferred annuities

Life assurance and deferred annuities.

[CGTA75 s20]

593.—(1) This section shall apply for the purposes of the Capital Gains Tax Acts as respects any policy of assurance or contract for a deferred annuity on the life of any person.

(2) No chargeable gain shall accrue on the disposal of or of an interest in the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money's worth.

(3) Subject to *subsection (2)*, the occasion of the payment of the sum or sums assured by a policy of assurance or of the first instalment of a deferred annuity, and the occasion of the surrender of a policy of assurance or of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to the first and further instalments of the annuity.

(4) In *subsection (3)*, the reference to payment of the sum assured shall include a reference to the transfer of investments or other assets to the owner of the policy in accordance with the policy.

Foreign life assurance and deferred annuities: taxation and returns.

[CGTA75 s20A; FA93 s24; FA95 s68; FA97 s74(1)]

594.—(1) (*a*) (i) For the purposes of this section, a policy of assurance or contract for a deferred annuity on the life of any person, being a policy issued or a contract made before the 20th day of May, 1993, shall be treated as a policy issued or contract made, as the case may be, after that date if there is a variation of the policy or contract on or after that date which directly or indirectly increases the benefits secured by, or extends the term of, the policy or contract, as the case may be.

(ii) For the purposes of *subparagraph (i)*, where a policy of assurance issued or a contract made

before the 20th day of May, 1993, provides an option to have another policy or contract substituted for it or to have any of its terms changed, any change in the terms of the policy or contract made in pursuance of the option shall be deemed to be a variation of the policy or contract, as the case may be.

(*b*) Subject to *subsection (2)*, this section shall be construed together with *subsections (3)* and *(4)* of *section 593* as if *subsection (3)* of that section were not subject to *subsection (2)* of that section.

(*c*) (i) In this paragraph and in *subsection (3)*—

"assurance company" has the same meaning as in section 3 of the Insurance Act, 1936;

"excluded policy" means a policy of assurance or contract for a deferred annuity on the life of any person where the policy is issued to or the contract is made with, as the case may be, a person who did not continuously reside outside the State throughout the period of 6 months commencing on the date of issue or the date of contract, as the case may be;

"life assurance fund" has the same meaning as in the Insurance Acts 1909 to 1969;

"relevant company" means a company which is—

(I) resident in the State, or

(II) chargeable under Case III of Schedule D by virtue of *section 726* in respect of its income from the investment of its life assurance fund.

(ii) *Subsection (2)* shall apply to any policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, on or after the 20th day of May, 1993—

(I) otherwise than by an assurance company which is a relevant company, or

(II) being a policy or contract which is an excluded policy issued or made, as the case may be, by a relevant company to which *section 710(2)* applies.

(2) (*a*) In this subsection, "relevant gain" means a chargeable gain arising on a disposal of or of an interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies, including a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for a consideration in money or money's worth.

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(*b*) *Section 593(2)* shall not apply in respect of any disposal of or of any interest in the rights under any policy of assurance or contract for a deferred annuity to which this subsection applies.

(*c*) A relevant gain shall be computed as if *section 556* had not been enacted.

(*d*) Notwithstanding *section 31*, the total amount of chargeable gains accruing to a person chargeable in a year of assessment after deducting any allowable losses shall not be less than the total amount of any relevant gains accruing to the person in that year, and accordingly any deduction for allowable losses made in computing the total amount of chargeable gains so accruing shall not exceed the total amount of chargeable gains so accruing which are not relevant gains.

(*e*) Notwithstanding *section 601* or *1028(4)*, an individual shall be charged to capital gains tax on the amount of any relevant gains accruing to the individual.

(3) As respects a policy of assurance or a contract for a deferred annuity to which *subsection (2)* applies, *section 895* shall apply with any necessary modifications—

(*a*) (i) to a relevant company, and

(ii) to every person carrying on in the State a trade or business in the ordinary course of the operations of which such person acts as an intermediary in or in connection with the issue of such a policy, or the making of such a contract,

in the same manner as it applies to every intermediary within the meaning of that section, and

(*b*) to a person resident or ordinarily resident in the State who is entitled to any amount payable under such a policy or contract, being an amount payable otherwise than in the event of the death of a person specified in the terms of the policy or the contract, as the case may be, in the same manner as it applies to a person resident in the State opening an account, in which a deposit which such person beneficially owns is held, at a location outside the State,

as if references in that section to—

(i) a deposit were references to any payment made by a person resident or ordinarily resident in the State in respect of such a policy or contract,

(ii) a foreign account were references to such a policy or contract,

(iii) the opening of a foreign account were references to the issue of such a policy or the making of such a contract, and

(iv) a relevant person were references to a person who in the normal course of such person's trade or business would issue such a policy or make such a contract.

(4) (*a*) In this subsection, ''reinsurance contract'' means any contract or other agreement for reassurance or reinsurance in respect of— Pt.19 S.594

(i) any policy of assurance on the life of any person, or

(ii) any class of such policies.

(*b*) Where apart from this paragraph a reinsurance contract would not be a policy of assurance on the life of any person for the purposes of the Capital Gains Tax Acts, it shall be deemed to be such a policy for those purposes.

(*c*) *Subsections (2)* and *(3)* shall not apply to, and shall be deemed never to have applied to, reinsurance contracts; but, where apart from this paragraph a reinsurance contract would not be a relevant policy within the meaning of *section 595* for the purposes of that section, it shall be deemed not to be such a policy for those purposes.

(*d*) (i) Subject to *paragraph (e)*, where *subsection (2)* would (apart from *paragraph (c)*) apply to a reinsurance contract in respect of any policy of assurance on the life of any person, being a policy issued on or after the 1st day of January, 1995, *section 593(2)* shall not apply in respect of any disposal or deemed disposal on or after the 1st day of January, 1995, of, or of any interest in, rights of the insured company under the reinsurance contract to the extent that—

(I) those rights refer to that policy, and

(II) the insured company could receive, otherwise than on the death, disablement or disease of any person or one of a class of persons to whom that policy refers, payment on a disposal of those rights the aggregate amount of which would exceed the aggregate amount of payment made by it in respect of those rights.

(ii) *Subparagraph (i)* shall apply as if—

(I) as respects any reinsurance contract made before the 20th day of May, 1993, that contract were made on that day, and

(II) as respects any reinsurance contract made or modified on or after the 1st day of January, 1995, there were deleted from *subparagraph (i)* ''being a policy issued on or after the 1st day of January, 1995,''.

(iii) *Subparagraphs (i)* and *(ii)* of *subsection (1)(a)* shall apply for the purposes of this paragraph as if for ''the 20th day of May, 1993'' there were substituted ''the 1st day of January, 1995''.

(*e*) *Paragraph (d)* shall not apply to any disposal of or of any interest in rights under a reinsurance contract, being a disposal resulting directly from the death, disablement or disease of a person or one of a class of persons to whom the reinsurance contract refers; but in computing any gain or loss in respect of a disposal or deemed disposal of or

of any interest in rights of the insured company under a reinsurance contract—

(i) there shall be excluded from the sums allowable under *section 552* so much of any payment made by the insured company under the reinsurance contract as is paid in respect of an entitlement to a payment on the death, disablement or disease of a person, or one of a class of persons, and

(ii) there shall be added to the consideration taken into account under *Chapter 2* of this Part the market value of an entitlement for any period, commencing on or after the most recent acquisition or deemed acquisition by the insured company of those rights, to a payment on the death, disablement or disease of a person, or one of a class of persons, to the extent that the insured company held the entitlement for that period in place of any return which would otherwise have accrued under the reinsurance contract and increased that consideration.

Life assurance policy or deferred annuity contract entered into or acquired by company.

[CGTA75 s20B; FA94 s58]

595.—(1) (*a*) In this section—

''relevant disposal'' means a disposal of or an interest in the rights under any relevant policy, other than—

(i) a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for a consideration in money or money's worth, or

(ii) a disposal resulting directly from the death, disablement or disease of a person, or one of a class of persons, specified in the terms of the policy;

''relevant gain'' means a chargeable gain arising on a relevant disposal;

''relevant policy'' means a policy of life assurance or a contract for a deferred annuity on the life of any person, entered into or acquired by a company on or after the 11th day of April, 1994, which is not a policy to which *section 594(2)* applies.

(*b*) (i) For the purposes of this section, a policy of assurance or a contract for a deferred annuity on the life of any person, entered into by a company before the 11th day of April, 1994, shall be treated as a policy or contract, as the case may be, entered into on or after that date if there is a variation of the policy or contract on or after that date which directly or indirectly increases the benefits secured by, or extends the term of, the policy or contract, as the case may be.

(ii) For the purposes of *subparagraph (i)*, where a policy or contract entered into by a company before the 11th day of April, 1994, provides an option to have another policy or contract substituted for it or to have any of its terms changed, any change in the terms of the policy or contract which is made in pursuance of the option shall be deemed to be a variation of the policy or contract, as the case may be.

(*c*) Subject to *subsection (2)*, this section shall be construed together with *subsections (3)* and *(4)* of *section 593*, as if *subsection (3)* of that section were not subject to *subsection (2)* of that section.

(2) *Section 593(2)* shall not apply in respect of any relevant disposal.

(3) (*a*) For the purposes of the Corporation Tax Acts—

(i) any relevant gain arising to a company shall be treated as if it were the net amount of a gain from the gross amount of which corporation tax has been deducted at the standard rate (within the meaning of *section 3*) of income tax,

(ii) the amount to be taken into account in respect of the relevant gain in computing in accordance with *section 78* the company's chargeable gains, for the accounting period in which the relevant gain arises, shall be that gross amount, and

(iii) the corporation tax treated as deducted from that gross amount shall—

(I) be set off against the corporation tax assessable on the company for that accounting period, or

(II) in so far as it cannot be set off in accordance with *clause (I)*, be repaid to the company.

(*b*) *Paragraph (a)* shall be disregarded for the purposes of *section 546(2)*.

(*c*) This subsection shall be construed together with the Corporation Tax Acts.

(4) For the purposes of this section, a contract, being a policy of life assurance or a contract for a deferred annuity on the life of any person, shall be treated as having been entered into by a company before the 11th day of April, 1994, if—

(*a*) (i) a document referable to the contract was served on the company in pursuance of section 52 of the Insurance Act, 1989, before the 11th day of April, 1994, and

(ii) the company entered into the contract on or before the 22nd day of April, 1994,

or

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(*b*) (i) the contract was entered into before the 30th day of June, 1994, by the company,

(ii) before the 11th day of April, 1994—

(I) there was in existence a binding agreement in writing under which the company was obliged to acquire land, and

(II) preliminary commitments or agreements had been entered into by the company—

(A) to obtain a loan, which was to be secured on the land, to defray money applied in acquiring the land, and

(B) to enter into the contract primarily for the purpose of repaying the loan,

and

(iii) the agreement under which the loan was advanced obliges the company to apply any payment made to it under the contract to the repayment of the loan before any other application by it of such payment.

CHAPTER 6

Transfer of business assets

Appropriations to and from stock in trade.

[CGTA75 s51(1) and Sch1 par15; FA90 s86]

596.—(1) Where an asset acquired by a person otherwise than as trading stock of a trade carried on by the person is appropriated by that person for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if that person had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to that person, that person shall be treated for the purposes of the Capital Gains Tax Acts as having by such appropriation disposed of the asset by selling it for its then market value.

(2) Where at any time an asset forming part of the trading stock of a person's trade is appropriated by the person for any other purpose or is retained by the person on that person ceasing to carry on the trade, that person shall be treated for the purposes of the Capital Gains Tax Acts as having acquired the asset at that time for a consideration equal to the amount brought into the accounts of the trade in respect of the asset for the purposes of income tax on the appropriation or on that person ceasing to carry on the trade, as the case may be.

(3) *Subsection (1)* shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if the person is chargeable to income tax in respect of the profits of the trade under Case I of Schedule D, and instead elects that the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for the purposes of income tax, be treated as reduced by the amount of the chargeable gain or increased by the amount of the allowable loss referred to in that subsection and, where that subsection does not apply by reason of such an election, the profits of the trade shall be computed accordingly; but—

(*a*) if a person making an election under this subsection is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others, and

(*b*) an election under this subsection shall not be made in any case where the application of *subsection (1)* would give rise to an allowable loss.

Replacement of business and other assets.

[CGTA75 s28; CGT(A)A78 s9]

597.—(1) In this section, ''farming'', ''trade'', ''profession'', ''office'' and ''employment'' have the same meanings respectively as in the Income Tax Acts, but not so as to apply the provisions of those Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued or as set up and commenced, and ''a trade of dealing in or developing land'' shall include a business of dealing in or developing land regarded as a trade under those Acts.

(2) This section shall apply with the necessary modifications in relation to—

(*a*) the discharge of the functions of a public authority,

(*b*) the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits,

(*c*) a profession, office or employment,

(*d*) such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed,

(*e*) the activities of a body of persons, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within *subsection (3)(b)* only if they are both occupied and used by the body and in the case of other specified assets only if they are used by the body,

(*f*) such of the activities of a body of persons established for the sole purpose of promoting athletic or amateur games or sports as are directed to that purpose, and

(*g*) farming,

as it applies in relation to a trade.

(3) The following shall be assets for the purpose of this section—

(*a*) plant or machinery;

(*b*) except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

(i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade,

(ii) any land occupied (as well as used) only for the purposes of the trade, provided that where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, the trade shall be treated for the purposes of this subsection as if it were not a trade of dealing in or developing land;

(*c*) goodwill.

(4) (*a*) Where—

(i) the consideration which a person carrying on a trade obtains for the disposal of, or of that person's interest in, assets (in this section referred to as ''the old assets'') used only for the purposes of the trade throughout the period of ownership is applied by that person in acquiring other assets, or an interest in other assets (in this section referred to as ''the new assets''),

(ii) the new assets on their acquisition are taken into use and used only for the purposes of the trade, and

(iii) the old assets and the new assets are assets of a kind specified in *subsection (3)*,

then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the chargeable gain accruing on the old assets did not accrue until that person ceases to use the new assets for the purposes of the trade.

(*b*) Where the consideration for the disposal of the new assets is applied in acquiring other new assets which on the acquisition are taken into use and used only for the purposes of the trade and are assets specified in *subsection (3)*, then, the person carrying on the trade shall be treated as if the chargeable gain accruing on the disposal of the old assets did not accrue until that person ceases to use the other new assets for the purposes of the trade and any further new assets which are acquired in a similar manner, taken into use, and used only, for the purposes of the trade and are assets specified in *subsection (3)*.

(5) *Subsection (4)* shall not apply if part only of the amount or value of the consideration for the disposal of or of the interest in the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of or of the interest in the old assets is so applied, then, the person carrying on the trade shall on making a claim in that behalf be treated for the purposes of the Capital Gains Tax Acts as if the amount of the gain accruing on the disposal of the old assets were reduced to the amount of consideration not applied in the acquisition of the new assets (and if not all chargeable gain with a proportionate reduction in the amount of the chargeable gain)

and the balance of the gain (or chargeable gain) shall be treated as if it did not accrue until that person ceases to use the new assets for the purposes of the trade. PT.19 S.597

(6) A chargeable gain or the balance of a chargeable gain which under *subsection (4)* or *(5)*, as may be appropriate, is treated as accruing on a date later than the date of the disposal on which it accrued shall not be so treated for the purposes of *section 556*.

(7) This section shall apply only if the acquisition of or of the interest in the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of or of the interest in the old assets, or at such earlier or later time as the Revenue Commissioners may by notice in writing allow; but, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets are, or the interest in the new assets is, acquired in pursuance of the contract, and when that fact is ascertained all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in the Capital Gains Tax Acts on the time within which assessments may be made.

(8) This section shall not apply unless the acquisition of or of the interest in the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of or of the interest in the new assets.

(9) Where over the period of ownership or any substantial part of the period of ownership part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, together with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of or of an interest in the building or structure and other land.

(10) Where the old assets were not used for the purposes of the trade throughout the period of ownership, this section shall apply as if a part of the asset representing its use for the purposes of the trade, having regard to the time and extent to which it was and was not used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of or of the interest in the asset.

(11) (*a*) This section shall apply in relation to a person who carries on 2 or more trades which are in different localities, but which are concerned wholly or mainly with goods or services of the same kind, as if, in relation to the assets used for the purposes of the trades, the trades were the same trade.

(*b*) This section shall apply in relation to a person who ceases to carry on a trade or trades (in this paragraph referred to as ''the old trade or trades'') which the person has carried on for a period of 10 years or more and commences to carry on another trade or trades (in this paragraph referred to as ''the new trade or trades'') within a period of 2 years from the date on which the person ceased to carry on the old trade or trades as if, in relation

to the old assets used for the purposes of one of the old trades and the new assets used for the purposes of the new trade, the 2 trades were the same trade.

(12) Without prejudice to the provisions of the Capital Gains Tax Acts providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under *subsection (4)* or *(5)* applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

Disposals of business or farm on "retirement".

[CGTA75 s26(1) to (6); FA90 s84(c)(iii); FA91 s42(b); FA95 s71(1); FA96 s60(1)]

598.—(1) (*a*) In this section and in *section 599*—

"chargeable business asset" means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by—

(i) the individual,

(ii) the individual's family company, or

(iii) a company which is a member of a trading group of which the holding company is the individual's family company,

other than an asset on the disposal of which no gain accruing would be a chargeable gain;

"family company", in relation to an individual, means, subject to *paragraph (b)*, a company the voting rights in which are—

(i) as to not less than 25 per cent, exercised by the individual, or

(ii) as to not less than 75 per cent, exercisable by the individual or a member of his or her family and, as to not less than 10 per cent, exercisable by the individual himself or herself;

"family", in relation to an individual, means the husband or wife of the individual, and a relative of the individual or of the individual's husband or wife, and "relative" means brother, sister, ancestor or lineal descendant;

"full-time working director" means a director required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent subsidiaries;

"qualifying assets", in relation to a disposal, includes—

(i) the chargeable business assets of the individual which apart from tangible movable property he or she has owned for a period of not less than 10 years ending with the disposal, and

(ii) the shares or securities which the individual has owned for a period of not less than 10 years ending with the disposal, being shares or securities of a company which has been a trading or a farming company and the individual's family company or a member of a trading group of which the holding company is that individual's family company during a period of not less than 10 years ending with the disposal and of which he or she has been a working director for a period of not less than 10 years during which period he or she has been a full-time working director of that company for a period of not less than 5 years;

''trade'', ''farming'', ''profession'', ''office'' and ''employment'' have the same meanings respectively as in the Income Tax Acts;

''trading company'' means a company whose business consists wholly or mainly of the carrying on of one or more trades or professions;

''trading group'' means a group of companies consisting of the holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions;

''75 per cent subsidiary'' has the meaning assigned to it by *section 9*.

(*b*) For the purposes of the definition of ''family company'', where a company which is a holding company would not but for this paragraph be an individual's family company, but would be such a company if the individual had not at any time on or after the 6th day of April, 1987, and before the 6th day of April, 1990, disposed of shares in the company to a child (within the meaning of *section 599*) of the individual, the company shall be deemed to be the individual's family company.

(*c*) In this section, references to the disposal of the whole or part of an individual's qualifying assets include references to the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the individual exercising that office or employment.

(*d*) For the purposes of the definition of ''qualifying assets'', there shall be taken into account—

(i) the period of ownership of a spouse of the individual as if it were a period of ownership of the individual,

(ii) where the chargeable business assets are new assets within the meaning of *section 597*, the period of ownership of the old assets as if it were a period of ownership of the new assets,

(iii) where the qualifying assets are shares or securities in a family company to which *section 600* applies, the period immediately before the transfer to the company of chargeable business assets during which those assets were owned by the individual as if it were a period of ownership of the individual of the qualifying assets or a period throughout which he or she was a full-time working director, as may be appropriate, and

(iv) a period immediately before the death of the spouse of the individual throughout which the deceased was a full-time working director as if it were a period throughout which the individual was a full-time working director.

(2) (*a*) Subject to this section, where an individual who has attained the age of 55 years disposes of the whole or part of his or her qualifying assets, then—

(i) if the amount or value of the consideration for the disposal does not exceed £250,000, relief shall be given in respect of the full amount of capital gains tax chargeable on any gain accruing on the disposal;

(ii) if the amount or value of the consideration for the disposal exceeds £250,000, the amount of capital gains tax chargeable on the gain accruing on the disposal shall not exceed 50 per cent of the difference between the amount of that consideration and £250,000.

(*b*) For the purposes of *paragraph (a)*, the amount of capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(3) For the purposes of *subsection (2)*, the consideration on the disposal of qualifying assets by the individual shall be aggregated, and nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets.

(4) Where a disposal of qualifying assets includes a disposal of shares or securities of the individual's family company, the amount of the consideration to be taken into account for the purposes of *subsection (2)* in respect of those shares or securities shall be the proportion of the consideration for those shares or securities which is equal to—

(*a*) in a case where the individual's family company is not a holding company, the proportion which the part of the value of the company's chargeable assets at the time of the disposal which is attributable to the value of the company's chargeable business assets bears to the whole of that value, and

(*b*) in a case where the individual's family company is a holding company, the proportion which the part of the value of the chargeable assets of the trading group (excluding shares or securities of one member of the group held by another member of the group) at the time of the disposal which is attributable to the value of the chargeable business assets of the trading group bears to the whole of that value;

but nothing in this section shall affect liability on any gains calculated by reference to the balance of the consideration for the disposal of those shares or securities.

(5) For the purposes of *subsection (4)*, every asset shall be a chargeable asset except one on the disposal of which by the company or a member of the trading group, as the case may be, at the time of the disposal of the shares or securities, no gain accruing to the company or member of the trading group, as the case may be, would be a chargeable gain.

(6) (*a*) The total of the amounts of relief given under this section for any year of assessment and all years of assessment before such year shall not exceed such amount as would reduce the total amount of capital gains tax chargeable for all those years of assessment below the amount which would be chargeable if the disposals of qualifying assets had all been made in the year of assessment.

(*b*) Where at any time the relief given under this section exceeds the amount of relief which would be given if the disposals of qualifying assets for the year of assessment and all years of assessment before such year had been made in the year of assessment, any necessary adjustment may be made by means of assessment or additional assessment and such assessment may be made at any time not more than 10 years after the end of the year of assessment in which the last of such disposals is made.

(*c*) For the purposes of this subsection, a disposal of qualifying assets other than a disposal of the whole of such assets, by a husband to a wife or by a wife to a husband shall, notwithstanding *section 1028(5)*, be taken into account at the market value of the assets.

(7) *Subsection (2)* shall apply where under *section 583* an individual is treated as disposing of interests in shares or securities of his or her family company in consideration of a capital distribution from the company (not being a distribution consisting of chargeable business assets) in the course of dissolving or winding up the company as it applies where he or she disposes of shares or securities of the company.

Disposals within family of business or farm.

[CGTA75 s27; CGT(A)A78 s8; FA90 s85; FA95 s72; FA96 s132(2) and Sch5 Pt II]

599.—(1) (*a*) In this section, ''child'', in relation to a disposal, includes a nephew or a niece who has worked substantially on a full-time basis for the period of 5 years ending with the disposal in carrying on, or assisting in the carrying on of, the trade, business or profession concerned or the work of, or connected with, the office or employment concerned.

(*b*) Subject to this section, where an individual who has attained the age of 55 years disposes of the whole

or part of his or her qualifying assets to his or her child, relief shall be given in respect of the capital gains tax chargeable on any gain accruing on the disposal.

(*c*) For the purposes of *paragraph (b)*, the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(2) Nothing in this section shall affect the computation of gains accruing on the disposal of assets other than qualifying assets by an individual who makes a disposal within *subsection (1)*.

(3) *Section 598(4)* shall apply to a disposal within *subsection (1)* as it applies to a disposal within *section 598(2)*.

(4) (*a*) Where assets comprised in a disposal to a child in respect of which relief has been granted under this section are, within 6 years of the disposal by the individual concerned, disposed of by the child, the capital gains tax which if *subsection (1)* had not applied would have been charged on the individual on his or her disposal of those assets to the child shall be assessed and charged on the child, in addition to any capital gains tax chargeable in respect of the gain accruing to the child on the child's disposal of those assets.

(*b*) An assessment to give effect to this subsection shall not be out of time if made within 10 years after the end of the year of assessment in which the assets are disposed of by the child.

(5) The consideration on a disposal within *subsection (1)* shall not be taken into account for the purposes of aggregation under *section 598(3)*.

Transfer of business to company.

[CGTA75 s51(1) and Sch2 par6; FA92 s61]

600.—(1) In this section—

''net chargeable gains'' means chargeable gains less allowable losses;

references to the business, in relation to shares or consideration received in exchange for the business, include references to assets of the business referred to in *subsection (2)*.

(2) This section shall apply for the purposes of the Capital Gains Tax Acts where a person who is not a company transfers to a company a business as a going concern, together with the whole of the assets of the business or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares (in this section referred to as ''the new assets'') issued by the company to the person transferring the business.

(3) The amount determined under *subsection (5)* shall be deducted from the aggregate (in this section referred to as ''the gain on the old assets'') of the net chargeable gains.

(4) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—

(*a*) the amount determined under *subsection (5)* shall be apportioned between the new assets as a whole, and

(*b*) the sums allowable as a deduction under *section 552(1)(a)* shall be reduced by the amount apportioned to the new asset under *paragraph (a)*, Pt.19 S.600

and, if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under *paragraph (a)* shall be in accordance with their market values at the time they were acquired by the transferor.

(5) (*a*) In this subsection, ''the cost of the new assets'' means any sums which would be allowable as a deduction under *section 552(1)(a)* if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

(*b*) The amount referred to in *subsections (3)* and *(4)(a)* shall be such portion of the gain on the old assets as bears the same proportion to the total of such gains as the cost of the new assets bears to the value of the whole of the consideration received by the transferor in exchange for the business.

(6) This section shall not apply to the transfer by a person of a business to a company wholly or partly in exchange for shares issued by the company, unless it is shown that the transfer is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to tax.

CHAPTER 7

Other reliefs and exemptions

Annual exempt amount.

601.—(1) An individual shall not be chargeable to capital gains tax for a year of assessment if the amount on which he or she is chargeable to capital gains tax under *section 31* for that year does not exceed £1,000.

[CGTA75 s16; CGT(A)A78 s16, s17, Sch1 par8 and Sch2; FA92 s59]

(2) Where the amount on which an individual is chargeable to capital gains tax under *section 31* for a year of assessment exceeds £1,000, only the excess of that amount over £1,000 shall be charged to capital gains tax for that year.

(3) Where, on the assumption that *subsection (2)* did not apply, an individual would be chargeable under the Capital Gains Tax Acts at more than one rate of tax for a year of assessment, the relief to be given under that subsection in respect of the first £1,000 of chargeable gains shall be given—

(*a*) if the individual would be so chargeable at 2 different rates, in respect of the chargeable gains which would be so chargeable at the higher of those rates and, in so far as relief cannot be so given, in respect of the chargeable gains which would be so chargeable at the lower of those rates, and

(*b*) if the individual would be so chargeable at 3 or more rates, in respect of the chargeable gains which would be so chargeable at the highest of those rates and, in so far as relief cannot be so given, in respect of the chargeable gains which would be so chargeable at the next highest of those rates, and so on.

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(4) In the case of an individual who dies in the year of assessment, this section shall apply with the substitution for the reference to the individual of a reference to his or her personal representatives, and the amount of chargeable gains shall be that on which the personal representatives are chargeable in respect of gains accruing before death.

(5) Relief shall not be given under this section where relief is allowed under *section 598* or *599*.

Chattel exemption.

[CGTA75 s17]

602.—(1) In this section, tangible movable property shall not include a wasting asset within the meaning of *section 560*.

(2) Subject to this section, a gain accruing on a disposal by an individual of an asset which is tangible movable property shall not be a chargeable gain if the amount or value of the consideration for the disposal does not exceed £2,000.

(3) (*a*) The amount of capital gains tax chargeable in respect of a gain accruing on a disposal within *subsection (2)* for a consideration the amount or value of which exceeds £2,000 shall not exceed 50 per cent of the difference between the amount of that consideration and £2,000.

(*b*) For the purposes of this subsection, the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(4) *Subsections (2)* and *(3)* shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under the Capital Gains Tax Acts the amount of a loss accruing on the disposal by an individual of tangible movable property the consideration for the disposal shall, if less than £2,000, be deemed to be £2,000 and the losses which are allowable losses shall be restricted accordingly.

(5) Where 2 or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person—

(*a*) to the same person, or

(*b*) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the 2 or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in tax and in allowable losses under *subsections (3)* and *(4)*, and this subsection shall also apply where the assets or some of the assets are disposed of on different occasions, and one of those occasions falls after the 28th day of February, 1974, but before the 6th day of April, 1974, but not so as to make any gain accruing on a disposal before the 6th day of April, 1974, a chargeable gain.

(6) Where the disposal is of a right or interest in or over tangible movable property, then—

(*a*) in the first instance, *subsections (2)* to *(4)* shall be applied in relation to the asset as a whole, taking the consideration as including, in addition to the consideration for

the disposal (in this subsection referred to as ''the actual consideration''), the market value of what remains undisposed of,

(*b*) if the sum of the actual consideration and that market value exceeds £2,000, the limitation on the amount of tax in *subsection (3)* shall be to 50 per cent of the difference between that sum and £2,000 multiplied by the fraction equal to the actual consideration divided by that sum, and

(*c*) if that sum is less than £2,000, any loss shall be restricted under *subsection (4)* by deeming the consideration to be the actual consideration plus that fraction of the difference between that sum and £2,000.

(7) This section shall not apply—

(*a*) in relation to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market, or

(*b*) in relation to a disposal of currency of any description.

Wasting chattels.

[CGTA75 s18]

603.—(1) Subject to this section, no chargeable gain shall accrue on the disposal of or of an interest in an asset which is tangible movable property and a wasting asset.

(2) *Subsection (1)* shall not apply to a disposal of or of an interest in an asset where—

(*a*) from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade or profession and that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under *paragraph (a)* or *(b)* of *section 552(1)*, or

(*b*) the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.

(3) In the case of the disposal of or of an interest in an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade or profession and partly for other purposes, or has been used for the purposes of a trade or profession for part of that period, or which has otherwise qualified in part only for capital allowances—

(*a*) the consideration for the disposal and any expenditure attributable to the asset or interest under *paragraph (a)* or *(b)* of *section 552(1)* shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances,

(*b*) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and

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(*c*) *subsection (1)* shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade or profession, or to the expenditure qualifying for capital allowances.

(4) *Subsection (1)* shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.

Disposals of principal private residence.

[CGTA75 s25; FA79 s35; FA80 s61(c); FA84 s67; FA97 s146(1) and Sch9 PtI par9(2)]

604.—(1) In this section, ''the period of ownership''—

(*a*) where the individual has had different interests at different times, shall be taken to begin from the first acquisition taken into account in determining the expenditure which under the Capital Gains Tax Acts is allowable as a deduction in computing the amount of the gain to which this section applies, and

(*b*) for the purposes of *subsections (3)* to *(5)*, shall not include any period before the 6th day of April, 1974.

(2) This section shall apply to a gain accruing to an individual on the disposal of or of an interest in—

(*a*) a dwelling house or part of a dwelling house which is or has been occupied by the individual as his or her only or main residence, or

(*b*) land which the individual has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the site of the dwelling house) not exceeding one acre;

but, where part of the land occupied with a residence is and part is not within this subsection, then, that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(3) The gain shall not be a chargeable gain if the dwelling house or the part of a dwelling house has been occupied by the individual as his or her only or main residence throughout the period of ownership or throughout the period of ownership except for all or any part of the last 12 months of that period.

(4) Where *subsection (3)* does not apply, such portion of the gain shall not be a chargeable gain as represents the same proportion of the gain as the length of the part or parts of the period of ownership during which the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence, but inclusive of the last 12 months of the period of ownership in any event, bears to the length of the period of ownership.

(5) (*a*) In this subsection, ''period of absence'' means a period during which the dwelling house or part of a dwelling house was not the individual's only or main residence and throughout which he or she had no residence or main residence eligible for relief under this section.

(*b*) For the purposes of *subsections (3)* and *(4)*—

(i) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the State, and

(ii) in addition, any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling house or the part of a dwelling house in consequence of the situation of the individual's place of work or in consequence of any condition imposed by the individual's employer requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of the employee's duties,

shall be treated as if in that period of absence the dwelling house or the part of a dwelling house was occupied by the individual as his or her only or main residence if both before and after the period the dwelling house (or the part in question) was occupied by the individual as his or her only or main residence.

(6) Where the gain accrues from the disposal of a dwelling house or part of a dwelling house part of which is used exclusively for the purposes of a trade, business or profession, the gain shall be apportioned and *subsections (2)* to *(5)* shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

(7) Where at any time in the period of ownership there is a change in the dwelling house or the part of it which is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling house for the purpose of a trade, business or profession or for any other purpose, the relief given by this section may be adjusted in such manner as the inspector and the individual may agree, or as the Appeal Commissioners may on an appeal consider to be just and reasonable.

(8) For the purposes of this section, an individual shall not be treated as having more than one main residence at any one time and in so far as it is necessary to determine which of 2 or more residences is an individual's main residence for any period—

(*a*) that question may be determined by agreement between the inspector and the individual on the latter giving notice in writing to the inspector by the end of the year 1975-76 or within 2 years from the beginning of that period if that is later, and

(*b*) failing such agreement, the question shall be determined by the inspector, whose determination may be as respects either the whole or specified parts of the period of ownership in question,

and notice of any determination by the inspector under *paragraph (b)* shall be given to the individual who may appeal to the Appeal Commissioners against that determination within 21 days of service of the notice.

(9) In the case of a man and his wife living with him—

(*a*) there may be for the purposes of this section only one residence or main residence for both so long as they are living together and, where a notice under *subsection (8)(a)* affects both the husband and his wife, it must be made by both,

(*b*) if the one disposes of, or of his or her interest in, the dwelling house or part of a dwelling house which is their only or main residence to the other, or if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the disposal or from whom it passes on death,

(*c*) if *paragraph (b)* applies but the dwelling house or part of a dwelling house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was the only or main residence of the one as if it was also the only or main residence of the other, and

(*d*) any notice under *subsection (8)(b)* which affects a residence owned by the husband and a residence owned by the wife shall be given to each and either may appeal under that subsection.

(10) This section shall also apply in relation to a gain accruing to a trustee on a disposal of settled property, being an asset within *subsection (2)*, where during the period of ownership of the trustee the dwelling house or the part of a dwelling house mentioned in that subsection has been the only or main residence of an individual entitled to occupy it under the terms of the settlement, and in this section as so applied—

(*a*) references to the individual shall be taken as references to the trustee except in relation to the occupation of the dwelling house or the part of a dwelling house, and

(*b*) the notice which may be given to the inspector under *subsection (8)(a)* shall be a joint notice by the trustee and the person entitled to occupy the dwelling house or the part of a dwelling house.

(11) (*a*) In this subsection, ''dependent relative'', in relation to an individual, means a relative of the individual, or of the wife or husband of the individual, who is incapacitated by old age or infirmity from maintaining himself or herself, or the widowed father or widowed mother (whether or not he or she is so incapacitated) of the individual or of the wife or husband of the individual.

(*b*) Where as respects a gain accruing to an individual on the disposal of, or of an interest in, a dwelling house or part of a dwelling house which is, or has at any time in his or her period of ownership been, the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration, the individual so claims, such relief shall be given in respect of it and of its garden or grounds as would be given under this section if the dwelling house (or part of the dwelling house) had been the individual's only or main residence in the period of residence by the dependent relative, and shall be so

given in addition to any relief available under this section apart from this subsection; but no more than one dwelling house (or part of a dwelling house) may qualify for relief as being the residence of a dependent relative of the claimant at any one time.

(12) (*a*) In this subsection—

"base date", in relation to an asset disposed of by an individual, means the date of acquisition by the individual of the asset or, if the asset was held by the individual on the 6th day of April, 1974, that date;

"base value", in relation to an asset disposed of by an individual, means the amount or value of the consideration, in money or money's worth, given by the individual or on his or her behalf wholly and exclusively for the acquisition of the asset exclusive of the incidental costs to the individual of the acquisition or, if the asset was held by the individual on the 6th day of April, 1974, the market value of the asset on that date;

"current use value" and "development land" have the same meanings respectively as in *section 648*.

(*b*) Where—

(i) a gain accrues to an individual on the disposal of or of an interest in an asset which is development land, and

(ii) apart from this subsection relief would be given under this section in respect of the disposal of that asset (being an asset within *subsection (2)* or *(11)*),

then, subject to *paragraph (c)*, that relief shall be given in respect of the gain (or where appropriate in respect of a portion of the gain) only to the extent (if any) to which such relief would be given if, in computing the chargeable gain accruing on the disposal (notwithstanding that the disposal was a disposal of development land), there were excluded from the computation—

(I) the amount (if any) by which the base value of the asset exceeds the current use value of the asset on the base date,

(II) the amount by which the consideration for the disposal of the asset exceeds the current use value of the asset on the date of the disposal,

(III) if the asset was not held by the individual on the 6th day of April, 1974, such proportion (if any) of the incidental costs to the individual of the acquisition of the asset as would be referable to the amount (if any) referred to in *subparagraph (I)*, and

(IV) such proportion of the incidental costs to the individual of the disposal of the asset as would be referable to the amount referred to in *subparagraph (II)*.

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(*c*) *Paragraph (b)* shall not apply to a disposal made by an individual in any year of assessment if the total consideration in respect of all disposals made by that individual in that year and to which that paragraph would otherwise apply does not exceed £15,000.

(13) Apportionments of consideration shall be made wherever required by this section and in particular where a person disposes of a dwelling house only part of which is the person's only or main residence.

(14) This section shall not apply in relation to a gain if the acquisition of or of the interest in the dwelling house or the part of the dwelling house was made wholly or mainly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain in so far as the gain is attributable to any expenditure which was incurred after the beginning of the period of ownership and wholly or mainly for the purpose of realising a gain from the disposal.

Disposals to authority possessing compulsory purchase powers.

[CGT(A)A78 s5]

605.—(1) Where a person makes a disposal of or of an interest in property situate in the State (in this section referred to as ''the original assets'') to an authority possessing compulsory purchase powers and claims and proves to the satisfaction of the Revenue Commissioners that—

(*a*) the disposal would not have been made but for—

(i) the exercise of those powers, or

(ii) the giving by the authority of formal notice of its intention to exercise those powers,

(*b*) the whole of the consideration for the disposal and no more is applied in acquiring other property situate in the State or an interest in such other property (in this section referred to as ''the replacement assets''), and

(*c*) the original assets and the replacement assets are within one, and the same one, of the classes of assets specified in *subsection (5)*,

then, for the purposes of the Capital Gains Tax Acts, the disposal shall not be treated as involving any disposal of the original assets and the acquisition shall not be treated as involving any acquisition of the replacement assets or any part of those assets, but the original assets and the replacement assets shall be treated as the same assets acquired as the original assets were acquired.

(2) In a case where *subsection (1)* would apply but for the fact that an amount in excess of the amount or value of the consideration for the disposal concerned is applied as described in *paragraph (b)* of that subsection—

(*a*) the person making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if, in consideration of that excess, that person had acquired at the time of the acquisition of the replacement assets a portion of those assets which bears to the whole the same proportion as the amount of the excess bears to the amount or value of the consideration applied in acquiring the replacement assets, and

(*b*) *subsection (1)* shall apply to the remainder of those assets and to the original assets. PT.19 S.605

(3) In a case where *subsection (1)* would apply but for the fact that part of the amount or value of the consideration for the disposal concerned is not applied as described in *paragraph (b)* of that subsection—

(*a*) the person making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if, in consideration of that part, that person had disposed of an interest in the original assets, and

(*b*) *subsection (1)* shall apply to the remainder of those assets and to the replacement assets.

(4) This section shall apply only if the acquisition of the replacement assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of the original assets, or at such earlier or later time as the Revenue Commissioners may by notice in writing allow; but, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without ascertaining whether the replacement assets are acquired in pursuance of the contract, and when that fact is ascertained all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in the Capital Gains Tax Acts on the time within which assessments may be made.

(5) The classes of assets referred to in *subsection (1)* shall be as follows:

Class 1

Assets of a trade carried on by the person making the disposal which consist of—

(*a*) plant or machinery;

(*b*) except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

(i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade,

(ii) any land occupied (as well as used) only for the purposes of the trade, provided that where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, the trade shall be treated for the purposes of this subsection as if it were not a trade of dealing in or developing land;

(*c*) goodwill.

Any land or buildings, not being land or buildings within Class 1, but excluding a dwelling house or part of a dwelling house in relation to which the person making the disposal would be entitled to claim relief under *section 604*.

Disposals of work of art, etc., loaned for public display.

[FA91 s43(1) and (2)]

606.—(1) This section shall apply to an object, being any picture, print, book, manuscript, sculpture, piece of jewellery or work of art which—

(*a*) in the opinion of the Revenue Commissioners, after such consultation (if any) as may seem to them to be necessary with such person or body of persons as in their opinion may be of assistance to them, has a market value of not less than £25,000 at the date when the object is loaned to a gallery or museum in the State, being a gallery or museum approved of by the Revenue Commissioners for the purposes of this section, and

(*b*) is the subject of or included in a display to which the public is afforded reasonable access in the gallery or museum to which it has been loaned for a period (in this section referred to as ''the qualifying period'') of not less than 6 years from the date the object is so loaned.

(2) Where after the end of the qualifying period a disposal of an object to which this section applies is made by the person who had loaned the object in the circumstances described in *subsection (1)*, the disposal shall be treated for the purposes of the Capital Gains Tax Acts as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

Government and certain other securities.

[CGTA75 s19; FA82 s41(a); FA84 s66; FA88 s70(2); FA89 s32 and s95(2); FA92 s24(2); FA96 s39(1) and (5)]

607.—(1) The following shall not be chargeable assets—

(*a*) securities (including savings certificates) issued under the authority of the Minister for Finance,

(*b*) stock issued by—

(i) a local authority, or

(ii) a harbour authority mentioned in the First Schedule to the Harbours Act, 1946,

(*c*) land bonds issued under the Land Purchase Acts,

(*d*) debentures, debenture stock, certificates of charge or other forms of security issued by the Electricity Supply Board, Bord Gáis Éireann, Radio Telefís Éireann, ICC Bank plc, Bord Telecom Éireann, Irish Telecommunications Investments plc, Córas Iompair Éireann, ACC Bank plc, Bord na Móna, Aerlínte Éireann, Teoranta, Aer Lingus, Teoranta or Aer Rianta, Teoranta,

(*e*) securities issued by the Housing Finance Agency under section 10 of the Housing Finance Agency Act, 1981,

(*f*) securities issued by a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995, Pt.19 S.607

(*g*) securities issued in the State, with the approval of the Minister for Finance, by the European Community, the European Coal and Steel Community, the International Bank for Reconstruction and Development, the European Atomic Energy Community or the European Investment Bank, and

(*h*) securities issued by An Post and guaranteed by the Minister for Finance.

(2) (*a*) All futures contracts which—

(i) are unconditional contracts for the acquisition or disposal of any of the instruments referred to in *subsection (1)* or any other instruments to which this section applies by virtue of any other enactment (whenever enacted), and

(ii) require delivery of the instruments in respect of which the contracts are made,

shall not be chargeable assets.

(*b*) The requirement in *paragraph (a)* that the instrument be delivered shall be treated as satisfied where a person who has entered into a futures contract dealt in or quoted on a futures exchange or stock exchange closes out the futures contract by entering into another futures contract, so dealt in or quoted, with obligations which are reciprocal to those of the contract so closed out and are thereafter settled in respect of both futures contracts by means (if any) of a single cash payment or receipt.

608.—(1) (*a*) In this subsection, ''financial futures'' and ''traded options'' mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State. Superannuation funds.

[CGTA75 s21; FA88 s30(1) and (2)(b); FA91 s38]

(*b*) For the purposes of *subsection (2)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(2) A gain shall not be a chargeable gain if accruing to a person from the person's disposal of investments held by that person as part of a fund approved under *section 774*, *784(4)* or *785(5)*.

(3) Where part only of a fund is approved under a section referred to in *subsection (2)*, the gain shall be exempt from being a chargeable gain to the same extent only as income derived from the assets would be exempt under that section.

(4) For the purposes of this section, the fund set up under section 6A of the Oireachtas (Allowances to Members) Act, 1938 (inserted

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by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1960), shall be deemed to be a fund approved under *section 774*.

Charities.

[CGTA75 s22]

609.—(1) Subject to *subsection (2)*, a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.

(2) Where property held on charitable trusts ceases to be subject to charitable trusts—

(*a*) the trustees shall be treated as if they had disposed of and immediately reacquired the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and

(*b*) if and in so far as any of that property represents directly or indirectly the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,

and an assessment to capital gains tax chargeable by virtue of *paragraph (b)* may be made at any time not more than 10 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.

Other bodies.

[CGTA75 s23; FA89 s33; FA91 s20(2) and s44; FA94 s32(5); FA95 s44(1) and (3); FA96 s39(1) and (6) and s64; FA97 s49(1) and (3)]

610.—(1) A gain shall not be a chargeable gain if it accrues to a body specified in *Part 1* of *Schedule 15*.

(2) A gain shall not be a chargeable gain if it accrues to a body specified in *Part 2* of *Schedule 15* in respect of a disposal by that body of an asset to the Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994).

Disposals to State, public bodies and charities.

[CGTA75 s39; CGT(A)A78 s10]

611.—(1) (*a*) Where a disposal of an asset is made otherwise than under a bargain at arm's length—

(i) to the State,

(ii) to a charity, or

(iii) to any of the bodies within section 28(3) of the Finance Act, 1931,

section 547 shall not apply but, if the disposal is for no consideration or for a consideration not exceeding the sums which would be allowable as a deduction under *sections 552* and *828(4)* for the purposes of computing a chargeable gain, then—

(I) the disposal and acquisition shall be treated for the purposes of the Capital Gains Tax Acts as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(II) where the disposal is to a person within *subparagraph (ii)* or *(iii)* and the asset is later disposed of by that person in such circumstances that if a gain accrued on the later disposal it would be a chargeable gain, the capital gains tax which would have been chargeable in respect of the gain accruing on the earlier disposal if *section 547* had applied in relation to it shall be assessed and charged on the person making the later disposal in addition to any capital gains tax chargeable in respect of the gain accruing to that person on the later disposal.

(*b*) Where relief was given under this subsection in respect of a disposal to a person of an asset, being a disposal made before the 20th day of December, 1978, and there is a later disposal of the asset by the person on or after that date, *paragraph (a)(II)* shall apply as if the first-mentioned disposal were the earlier disposal referred to in that paragraph.

(*c*) An assessment to give effect to *paragraph (a)(II)* shall not be out of time if made within 10 years after the end of the year of assessment in which the asset concerned is disposed of by the person making the later disposal.

(*d*) For the purposes of *paragraph (a)(II)*, the amount of the capital gains tax which would have been chargeable in respect of the gain accruing on the earlier disposal shall be the amount of tax which would not have been chargeable but for that gain.

(2) Where under *section 576(1)* or *577(3)* any assets or parts of any assets forming part of settled property are deemed to be disposed of and reacquired by the trustee, and—

(*a*) where the assets deemed to be disposed of under *section 576(1)* are reacquired on behalf of the State, a charity or a body within section 28(3) of the Finance Act, 1931, or

(*b*) the assets which or parts of which are deemed to be disposed of and reacquired under *section 577(3)* are held for the purposes of the State, a charity or a body within section 28(3) of the Finance Act, 1931,

then, if no consideration is received by any person for or in connection with any transaction by virtue of which the State, the charity or other body becomes so entitled or the assets are so held, the disposal and acquisition of the assets to which the State, the charity or other body becomes so entitled or of the assets which are held as mentioned in *paragraph (b)* shall be treated for the purposes of Capital Gains Tax Acts as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

Scheme for retirement of farmers.

612.—For the purposes of the Capital Gains Tax Acts, an amount by means of capital sum or premium provided under the European Communities (Retirement of Farmers) Regulations, 1974 (S.I. No. 116 of 1974), whether or not an annuity is granted in place of such capital sum or premium, shall not be deemed to form part of the

[CGTA75 s30]

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consideration for the disposal in relation to which such capital sum or premium is provided.

Miscellaneous exemptions for certain kinds of property.

[CGTA75s24]

613.—(1) The following shall not be chargeable gains—

(*a*) any bonus payable under an instalment saving scheme within the meaning of section 53 of the Finance Act, 1970;

(*b*) any prize under section 22 of the Finance (Miscellaneous Provisions) Act, 1956;

(*c*) any sum obtained by means of compensation or damages for any wrong or injury suffered by an individual in his or her person or in his or her profession.

(2) Winnings from betting (including pool betting), lotteries, sweepstakes or games with prizes shall not be chargeable gains, and rights to winnings obtained by participating in any pool betting, lottery, sweepstake or game with prizes shall not be chargeable assets.

(3) No chargeable gain shall accrue on the disposal of a right to or to any part of—

(*a*) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants,

(*b*) an annuity granted otherwise than under a contract for a deferred annuity by a company as part of its business of granting annuities on human life, whether or not including instalments of capital, or

(*c*) annual payments due under a covenant made by any person and not secured on any property.

(4) (*a*) No chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including in particular an annuity or life interest and the reversion to an annuity or life interest)—

(i) by the person for whose benefit the interest was created by the terms of the settlement, or

(ii) by any other person except one who acquired, or derives that person's title from one who acquired, the interest for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement.

(*b*) Subject to *paragraph (a)*, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes as the holder of that interest absolutely entitled as against the trustee to any settled property, the person shall be treated as disposing of the interest in consideration of obtaining that settled property, but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by the trustee under *section 576(1)*.

PART 20

COMPANIES' CHARGEABLE GAINS

CHAPTER 1

General

Capital distribution derived from chargeable gain of company: recovery of tax from shareholder.

[CTA76 s126]

614.—(1) In this section, ''capital distribution'' has the same meaning as in *section 583*.

(2) This section shall apply where a person connected with a company resident in the State receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(*a*) the capital so distributed derives from the disposal after the 5th day of April, 1976, of assets in respect of which a chargeable gain accrues to the company, or

(*b*) the distribution constitutes such a disposal of assets.

(3) Where the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date when it becomes payable by the company, the person referred to in *subsection (2)* may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(*a*) not exceeding the amount or value of the capital distribution which that person has received or became entitled to receive, and

(*b*) not exceeding a proportion equal to that person's share of the capital distribution made by the company of corporation tax on the amount and at the rate charged in respect of that gain in the assessment in which that tax was charged.

(4) A person paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.

(5) This section is without prejudice to any liability of the person receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to such person by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

Company reconstruction or amalgamation: transfer of assets.

[CTA76 s127; CGT(A)A78 s13]

615.—(1) In this section—

''scheme of reconstruction or amalgamation'' means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies;

''trading stock'' has the same meaning as in *section 89*.

(2) Subject to this section, where—

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(*a*) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company,

(*b*) at the time of the transfer both companies are resident in the State, and

(*c*) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, in so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by means of the transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of *section 556* the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of the assets.

(3) This section shall not apply in relation to an asset which until the transfer formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Groups of companies: interpretation.

[CTA76 s129(1) to (6)(b); FA90 s58]

616.—(1) For the purposes of this section and of the following sections of this Part—

(*a*) references to a company shall, subject to *section 621(1)*, apply only to a company, as limited by *subsection (2)*, which is resident in the State;

(*b*) a principal company and all its 75 per cent subsidiaries shall form a group, and where a principal company is a member of a group as being itself a 75 per cent subsidiary that group shall comprise all its 75 per cent subsidiaries;

(*c*) ''principal company'' means a company of which another company is a 75 per cent subsidiary;

(*d*) in applying the definition of ''75 per cent subsidiary'' in *section 9*, any share capital of a registered industrial and provident society shall be treated as ordinary share capital;

(*e*) ''group'' and ''subsidiary'' shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the State.

(2) For the purposes of this section and of the following sections of this Part, references to a company shall apply only to—

(*a*) a company within the meaning of the Companies Act, 1963,

(*b*) a company constituted under any other Act or a charter or letters patent or (although resident in the State) formed under the law of a country or territory outside the State,

(*c*) a registered industrial and provident society, being a society within the meaning of *section 698*, and

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(*d*) a building society incorporated or deemed by virtue of section 124(2) of the Building Societies Act, 1989, to be incorporated under that Act.

(3) For the purposes of this section and of the following sections of this Part, a group shall remain the same group so long as the same company remains the principal company of the group and, if at any time the principal company of a group becomes a 75 per cent subsidiary of another company, the group of which it was the principal company before that time shall be regarded as the same as the group of which that other company is the principal company or a 75 per cent subsidiary, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

(4) For the purposes of this section and of the following sections of this Part, the passing of a resolution or the making of an order or any other act for the winding up of a company shall not be regarded as the occasion of that company or of any 75 per cent subsidiary of that company ceasing to be a member of a group of companies.

(5) (*a*) The following sections of this Part, except in so far as they relate to the recovery of tax, shall also apply in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if—

(i) such bodies were companies within the meaning of those sections,

(ii) any such bodies charged with related functions and subsidiaries of any of them formed a group, and

(iii) any 2 or more such bodies charged at different times with the same or related functions were members of a group.

(*b*) *Paragraph (a)* shall apply subject to any enactment by virtue of which property, rights, liabilities or activities of one such body mentioned in that paragraph are to be treated for corporation tax as those of another such body.

(6) For the purposes of this Part—

(*a*) *section 557* and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain shall be operated before the operation of and without regard to—

(i) *section 617(1)*, and

(ii) any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal;

(*b*) *section 589* shall not apply where the transfer is a disposal to which *section 617(1)* applies.

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Transfers of assets, other than trading stock, within group.

[CTA76 s130]

617.—(1) Notwithstanding any provision in the Capital Gains Tax Acts fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except where provided by *subsections (2)* and *(3)*, be treated, in so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other member's disposal neither a gain nor a loss would accrue to that other member; but, where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

(2) *Subsection (1)* shall not apply where the disposal is—

(*a*) a disposal of a debt from a member of a group of companies effected by satisfying the debt or part of it, or

(*b*) a disposal of redeemable shares in a company on the occasion of their redemption,

and the reference in that subsection to a member of a group of companies disposing of an asset shall not apply to anything which under *section 583* is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (within the meaning of that section) from that company, whether or not involving a reduction of capital.

(3) For the purposes of *subsection (1)*, in so far as the consideration for the disposal consists of money or money's worth by means of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

Transfers of trading stock within group.

[CTA76 s131]

618.—(1) Where a member of a group of companies acquires an asset as trading stock from another member of the group and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring the asset shall be treated for the purposes of *section 596* as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where a member of a group of companies disposes of an asset to another member of the group and the asset formed part of the trading stock of a trade carried on by the member disposing of the asset but is acquired by the other member otherwise than as trading stock of a trade carried on by that other member, the member disposing of the asset shall be treated for the purposes of *section 596* as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

Disposals or acquisitions outside group.

[CTA76 s132; CGT(A)A78 s14; FA92 s73]

619.—(1) Where a company which is or has been a member of a group of companies disposes of an asset which it acquired from another member of the group at a time when both were members of the group, *section 555* shall apply in relation to any capital allowances made to the other member (in so far as not taken into account in relation to a disposal of the asset by that other member), and so on as respects previous transfers of the asset between members of the

group, but this shall not be taken as affecting the consideration for which an asset is deemed under *section 617(1)* to be acquired. PT.20 S.619

(2) (*a*) *Section 556* shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of the asset by the member disposing of the asset.

(*b*) Notwithstanding *paragraph (a)*, where at any time after the asset was acquired or provided by the group so taken as a single person and before the 24th day of April, 1992, there was an acquisition (in this paragraph referred to as ''the later acquisition'') of the asset by a member of the group from another member of the group as a result of a relevant disposal (within the meaning of *section 648*), this subsection shall apply as if the reference in *paragraph (a)* to the acquisition or provision of the asset by the group were a reference to the later acquisition or, where there was more than one, the last such acquisition.

Replacement of business assets by members of group.

620.—For the purposes of *section 597*, all the trades carried on by members of a group of companies shall be treated as a single trade (except in a case of one member of the group acquiring, or acquiring the interest in, the new assets from another member or disposing of, or disposing of the interest in, the old assets to another member). [CTA76 s133]

Depreciatory transactions in group.

621.—(1) For the purposes of this section—

''securities'' includes any loan stock or similar security whether secured or unsecured; [CTA76 s138]

references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group;

a ''group of companies'' may consist of companies some or all of which are not resident in the State.

(2) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under *section 538(2)* that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(3) This section shall apply as respects a disposal of shares in or securities of a company (in this section referred to as an ''ultimate disposal'') if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after the 6th day of April, 1974, and for this purpose ''depreciatory transaction'' means—

(*a*) any disposal of assets at other than market value by one member of a group of companies to another, or

(*b*) any other transaction satisfying the conditions of *subsection (4)*;

but a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been taken into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) The conditions referred to in *subsection (3)(b)* are—

(*a*) that the company, the shares in which or securities of which are the subject of the ultimate disposal, or any 75 per cent subsidiary of that company, was a party to the transaction, and

(*b*) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(5) Without prejudice to the generality of *subsection (3)*, the cancellation of any shares in or securities of one member of a group of companies under section 72 of the Companies Act, 1963, shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in *subsection (4)*.

(6) Where the person making the ultimate disposal is or has at any time been a member of the group of companies referred to in *subsection (3)* or *(4)*, any allowable loss accruing on the disposal shall be reduced to such extent as appears to the inspector, or on appeal the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the depreciatory transaction; but, if the person making the ultimate disposal is not a member of that group when disposing of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(7) The inspector, the Appeal Commissioners or the judge of the Circuit Court shall make the decision under *subsection (6)* on the basis that the allowable loss ought not to reflect any diminution in the value of the company's assets attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after the 6th day of April, 1974, which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(8) (*a*) Where under *subsection (6)* a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares in or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 10 years after the depreciatory transaction, shall be reduced to such extent as appears to the inspector, or on appeal to the Appeal Commissioners, or on a rehearing by a judge of the Circuit Court, that judge, to be just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of their disposal.

(*b*) Notwithstanding *paragraph (a)*, the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

(*c*) All such adjustments, whether by means of discharge or repayment of tax or otherwise, as are required to give effect to this subsection may be made at any time. Pt.20 S.621

Dividend stripping.

622.—(1) This section shall apply where one company (in this section referred to as ''the first company'') has a holding in another company (in this section referred to as ''the second company'') and the following conditions are fulfilled— [CTA76 s139]

(*a*) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent of all holdings of the same class in the second company,

(*b*) that the first company is not a dealing company in relation to the holding,

(*c*) that a distribution is or has been made on or after the 6th day of April, 1974, to the first company in respect of the holding, and

(*d*) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) (*a*) Where this section applies in relation to a holding, *section 621* shall apply in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which *section 617* applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.

(*b*) Notwithstanding *paragraph (a)*, the distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been taken into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(3) This section shall be construed together with *section 621*.

(4) For the purposes of this section, a company shall be a dealing company in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.

(5) References in this section to a holding in a company are references to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

(*a*) a company's holdings of different classes in another company shall be treated as separate holdings, and

(*b*) holdings of shares or securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(6) For the purposes of *subsection (1)*—

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(*a*) all a company's holdings of the same class in another company shall be treated as ingredients constituting a single holding, and

(*b*) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent of all holdings of that class.

Company ceasing to be member of group.

[CTA76 s135 and FA96 s51]

623.—(1) For the purposes of this section—

(*a*) 2 or more companies shall be associated companies if by themselves they would form a group of companies;

(*b*) a chargeable gain shall be deferred on a replacement of business assets if, by one or more claims under *section 597*, a chargeable gain on the disposal of those assets is treated as not accruing until the new assets within the meaning of that section cease to be used for the purpose of a trade carried on by the company making the claim;

(*c*) an asset acquired by the chargeable company shall be 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, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion;

(*d*) references to a company ceasing to be a member of a group of companies shall not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved where the winding up or dissolution of the member or the other member, as the case may be, is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(2) Where a company (in this section referred to as ''the chargeable company'') ceases to be a member of a group of companies, this section shall apply as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell within the period of 10 years ending with the time when the company ceases to be a member of the group.

(3) (*a*) Where 2 or more associated companies (in this subsection referred to as ''the associated companies'') cease to be members of a group at the same time—

(i) *subsection (2)* shall not apply as respects an acquisition by one from another of the associated companies, and

(ii) where—

(I) a dividend has been paid or a distribution has been made by one of the associated companies

to a company which is not one of the associated companies, and

(II) the dividend so paid or the distribution so made has been paid or made, as the case may be, wholly or partly out of profits which derive from the disposal of any asset by one to another of the associated companies,

the amount of the dividend paid or the amount or value of the distribution made, to the extent that it is paid or made, as the case may be, out of those profits, shall be deemed for the purposes of the Capital Gains Tax Acts to be consideration (in addition to any other consideration) received by the member of the group or former member of the group in respect of a disposal, being a disposal which gave rise to or was caused by the associated companies ceasing to be members of the group.

(*b*) *Paragraph (a)(ii)* shall not apply to a distribution other than a dividend where a company ceases to be a member of a group of companies before the 23rd day of April, 1996.

(4) If when the chargeable company ceases to be a member of the group the chargeable company, or an associated company also leaving the group, owns otherwise than as trading stock—

(*a*) the asset referred to in *subsection (2)*, or

(*b*) property on the acquisition of which a chargeable gain in relation to the asset has been deferred on a replacement of business assets,

the chargeable company shall be treated for the purposes of the Capital Gains Tax Acts as if immediately after its acquisition of the asset it had sold and immediately reacquired the asset at market value at that time.

(5) Where any of the corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date when it becomes payable, then—

(*a*) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and

(*b*) a company which owned the asset on that date or when the chargeable company ceased to a member of the group,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax, and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

(6) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 10 years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of and reacquired an asset, all such

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recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by means of assessment or by means of discharge or repayment of tax, as may be required in consequence of this section shall be made.

Exemption from charge under *section 623* in case of certain mergers.

[CTA76 s136]

624.—(1) *Section 623* shall not apply in a case where—

(*a*) as part of a merger a company (in this section referred to as ''company A'') ceases to be a member of a group of companies (in this section referred to as ''the A group''), and

(*b*) it is shown that the merger was carried out for bona fide commercial reasons and that the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section, ''merger'' means an arrangement (including a series of arrangements)—

(*a*) whereby one or more companies (in this section referred to as ''the acquiring company'' or, as the case may be, ''the acquiring companies'') none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A,

(*b*) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies, and

(*c*) in respect of which the conditions in *subsection (4)* are fulfilled.

(3) For the purposes of *subsection (2)*, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in *subsection (2)(c)* are—

(*a*) that not less than 25 per cent by value of each of the interests acquired as mentioned in *paragraphs (a)* and *(b)* of *subsection (2)* consists of a holding of ordinary share capital, and the remainder of the interest or, as the case may be, of each of the interests acquired as mentioned in *paragraph (b)* of that subsection consists of a holding of share capital (of any description) or debentures or both,

(*b*) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in *subsection (2)(a)* is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in *subsection (2)(b)*, and

(*c*) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in *subsection (2)(a)*, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in *subsection (2)(b)*, Pt.20 S.624

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

(5) Notwithstanding *section 616(1)(a)*, references in this section to a company shall include references to a company resident outside the State.

Shares in subsidiary member of group.

[CTA76 s137]

625.—(1) (*a*) This section shall apply if a company (in this section referred to as ''the subsidiary'') ceases to be a member of a group of companies, and on an earlier occasion shares in the subsidiary were disposed of by another company (in this section referred to as ''the chargeable company'') which was then a member of that group in the course of an amalgamation or reconstruction in the group, but only if that earlier occasion fell within the period of 10 years ending on the date on which the subsidiary ceases to be a member of the group.

(*b*) References in this section to a company ceasing to be a member of a group of companies shall not apply to cases where a company ceases to be a member of a group by being wound up or dissolved or in consequence of another member of the group being wound up or dissolved.

(2) The chargeable company shall be treated for the purposes of the Capital Gains Tax Acts as if immediately before the earlier occasion it had sold and immediately reacquired the shares referred to in *subsection (1)(a)* at market value at that time.

(3) Where before the subsidiary ceases to be a member of the group the chargeable company has ceased to exist, or a resolution has been passed, or an order made, for the winding up of the company, or any other act has been done for the like purpose, any corporation tax to which, if the chargeable company had continued in existence, it would have been chargeable in consequence of this section may be assessed and charged (in the name of the chargeable company) on the company which is, at the time when the subsidiary ceases to be a member of the group, the principal company of the group.

(4) Where any of the corporation tax assessed on a company in consequence of this section, or in pursuance of *subsection (3)*, is not paid within 6 months from the date when it becomes payable, then—

(*a*) a company which is on that date, or was on the earlier occasion, the principal company of the group, and

(*b*) any company taking an interest in the subsidiary as part of the amalgamation or reconstruction in the group,

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may at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax, and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company or, as the case may be, from the company assessed under *subsection (3)*.

(5) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 10 years from the time when the subsidiary ceased to be a member of the group and, in relation to any disposal of the property after the earlier occasion, there shall be made all such adjustments of tax, whether by means of assessment or by means of discharge or repayment of tax, as may be required in consequence of this section.

(6) For the purposes of this section, there shall be a disposal of shares in the course of an amalgamation or reconstruction in a group of companies if—

(*a*) *section 586* or *587* applies to shares in a company so as to equate them with shares in or debentures of another company, and

(*b*) the companies are members of the same group, or become members of the same group as a result of the amalgamation or reconstruction.

(7) Where by virtue of *section 587* shares are to be treated as cancelled and replaced by a new issue, references in this section to a disposal of shares include references to the occasion of the shares being so treated.

Tax on company recoverable from other members of group.

[CTA76 s134]

626.—(1) Where at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within 6 months from the date when it becomes payable by the company, then, if the tax so assessed included any amount in respect of chargeable gains—

(*a*) a company which at the time when the gain accrued was the principal company of the group, and

(*b*) any other company which in any part of the period of 2 years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it or, where the asset is an interest or right in or over another asset, owned either asset or any part of either asset,

may at any time within 2 years from the time when the tax became payable be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount and at the rate charged in respect of that gain in the assessment on the company to which the chargeable gain accrued.

(2) A company paying any amount of tax under *subsection (1)* shall be entitled to recover a sum of that amount—

(*a*) from the company to which the chargeable gain accrued, or

(*b*) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company, Pt.20 S.626

and a company paying any amount under *paragraph (b)* shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued and, in so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of that asset (or, where that asset is an interest or right in or over another asset, owned either asset or any part of either asset) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over that asset, was disposed of by that company.

CHAPTER 2

Provisions where companies cease to be resident in the State

Deemed disposal of assets.

[FA97 s42]

627.—(1) (*a*) In this section and in *section 628*—

"designated area", "exploration or exploitation activities" and "exploration or exploitation rights" have the same meanings respectively as in *section 13*;

"exploration or exploitation assets" means assets used or intended for use in connection with exploration or exploitation activities carried on in the State or in a designated area;

"market value" shall be construed in accordance with *section 548*;

"the new assets" and "the old assets" have the meanings respectively assigned to them by *section 597*.

(*b*) For the purposes of this section and *section 628*, a company shall not be regarded as ceasing to be resident in the State by reason only that it ceases to exist.

(2) (*a*) In this subsection—

"control" shall be construed in accordance with *subsections (2)* to *(6)* of *section 432* as if in *subsection (6)* of that section for "5 or fewer participators" there were substituted "persons resident in a relevant territory";

"excluded company" means a company of which not less than 90 per cent of its issued share capital is held by a foreign company or foreign companies, or by a person or persons directly or indirectly controlled by a foreign company or foreign companies;

"foreign company" means a company which—

(i) is not resident in the State,

(ii) is under the control of a person or persons resident in a relevant territory, and

(iii) is not under the control of a person or persons resident in the State;

"relevant territory" means—

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(i) the United States of America, or

(ii) a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made.

(*b*) Subject to *paragraph (c)*, this section and *section 628* shall apply to a company (in this section referred to as a ''relevant company'') if at any time (in this section and in *section 628* referred to as ''the relevant time'') on or after the 21st day of April, 1997, the company ceases to be resident in the State.

(*c*) This section and *section 628* shall not apply to a company which is an excluded company.

(3) A relevant company shall be deemed for the purposes of the Capital Gains Tax Acts—

(*a*) to have disposed of all its assets, other than assets excepted from this subsection by *subsection (5)*, immediately before the relevant time, and

(*b*) to have immediately reacquired them,

at the market value of the assets at that time.

(4) *Section 597* shall not apply where a relevant company—

(*a*) has disposed of the old assets, or of its interest in those assets, before the relevant time, and

(*b*) acquires the new assets, or its interest in those assets, after the relevant time,

unless the new assets are excepted from this subsection by *subsection (5)*.

(5) Where at any time after the relevant time a relevant company carries on a trade in the State through a branch or agency—

(*a*) any assets which, immediately after the relevant time, are situated in the State and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from *subsection (3)*, and

(*b*) any new assets which, after that time, are so situated and are so used or so held shall be excepted from *subsection (4)*,

and references in this subsection to assets situated in the State include references to exploration or exploitation assets and to exploration or exploitation rights.

Postponement of charge on deemed disposal under *section 627.*

[FA97 s43]

628.—(1) (*a*) In this section—

''deemed disposal'' means a disposal which by virtue of *section 627(3)* is deemed to have been made;

''foreign assets'' of a company means any assets of the company which immediately after the relevant time are situated outside the State and are used in or for the purposes of a trade carried on by the company outside the State.

(*b*) For the purposes of this section, a company shall be a 75 per cent subsidiary of another company if and so long as not less than 75 per cent of its ordinary share capital (within the meaning of *section 2*) is owned directly by that other company. Pt.20 S.628

(2) Where—

(*a*) immediately after the relevant time a company (in this section referred to as ''the company'') to which this section applies by virtue of *section 627* is a 75 per cent subsidiary of another company (in this section referred to as ''the principal company'') which is resident in the State, and

(*b*) the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after the relevant time,

the Capital Gains Tax Acts shall apply subject to *subsections (3)* to *(6)*.

(3) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(*a*) that deemed disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses, and

(*b*) the whole of that single chargeable gain shall be treated as not accruing to the company on that disposal but an equivalent amount (in this section referred to as ''the postponed gain'') shall be taken into account in accordance with *subsections (4)* and *(5)*.

(4) (*a*) In this subsection, ''the appropriate proportion'' means the proportion which the chargeable gain taken into account in determining the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(*b*) Where at any time within 10 years after the relevant time the company disposes of any assets (in this subsection referred to as ''relevant assets'') the chargeable gains on which were taken into account in determining the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain at that time the whole or the appropriate proportion of the postponed gain in so far as not already taken into account under this subsection or *subsection (5)*.

(5) Where at any time within 10 years after the relevant time—

(*a*) the company ceases to be a 75 per cent subsidiary of the principal company, or

(*b*) the principal company ceases to be resident in the State,

there shall be deemed to accrue to the principal company as a chargeable gain—

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(i) where *paragraph (a)* applies, at that time, and

(ii) where *paragraph (b)* applies, immediately before that time,

the whole of the postponed gain in so far as not already taken into account under this subsection or *subsection (4)*.

(6) Where at any time—

(*a*) the company has allowable losses which have not been allowed as a deduction from chargeable gains, and

(*b*) a chargeable gain accrues to the principal company under *subsection (4)* or *(5)*,

then, if and to the extent that the principal company and the company jointly so elect by notice in writing given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

Tax on non-resident company recoverable from another member of group or from controlling director.

[FA97 s44]

629.—(1) In this section—

''chargeable period'' means a year of assessment or an accounting period, as the case may be;

''controlling director'', in relation to a company, means a director of the company who has control of the company (construing control in accordance with *section 432*);

''director'', in relation to a company, has the same meaning as in *section 116*, and includes any person within section *433(4)*;

''group'' has the meaning which would be given by *section 616* if in that section references to residence in the State were omitted and for references to ''75 per cent subsidiaries'' there were substituted references to ''51 per cent subsidiaries'', and references to a company being a member of a group shall be construed accordingly;

''specified period'', in relation to a chargeable period, means the period beginning with the specified return date for the chargeable period (within the meaning of *section 950*) and ending 3 years after the time when a return under *section 951* for the chargeable period is delivered to the appropriate inspector (within the meaning of *section 950*);

''tax'' means corporation tax or capital gains tax, as the case may be.

(2) This section shall apply at any time on or after the 21st day of April, 1997, where tax payable (being tax which but for *section 627* or *628* would not be payable) by a company (in this section referred to as ''the taxpayer company'') for a chargeable period (in this section referred to as ''the chargeable period concerned'') is not paid within 6 months after the date on or before which the tax is due and payable.

(3) The Revenue Commissioners may, at any time before the end of the specified period in relation to the chargeable period concerned, serve on any person to whom *subsection (4)* applies a notice—

(*a*) stating the amount which remains unpaid of the tax payable by the taxpayer company for the chargeable period concerned and the date on or before which the tax became due and payable, and

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(*b*) requiring that person to pay that amount within 30 days of the service of the notice.

(4) (*a*) This subsection shall apply to any person, being—

(i) a company which is, or during the period of 12 months ending with the time when the gain accrued was, a member of the same group as the taxpayer company, and

(ii) a person who is, or during that period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(*b*) This subsection shall apply in any case where the gain accrued before the 21st day of April, 1998, with the substitution in *paragraph (a)(i)* of ''beginning with the 21st day of April, 1997, and'' for ''of 12 months''.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due by such person, and such person may recover any such amount paid on foot of a notice under this section from the taxpayer company.

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

PART 21

Mergers, Divisions, Transfers of Assets and Exchanges of Shares Concerning Companies of Different Member States

630.—In this Part—

Interpretation (*Part 21*).

''bilateral agreement'' means arrangements having the force of law by virtue of *section 826*;

[FA92 s64]

''company'' means a company from a Member State;

''company from a Member State'' has the meaning assigned to it by Article 3 of the Directive;

''the Directive'' means Council Directive No. 90/434/EEC of 23 July 1990[1] on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States;

''Member State'' means a Member State of the European Communities;

[1]O.J. No. L225, 20.8.1990, p. 1.

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''receiving company'' means the company to which the whole or part of a trade is transferred in the course of a transfer;

''securities'' means shares and debentures;

''shares'' includes stock;

''transfer'' means the transfer by a company of the whole or part of its trade in the circumstances set out in *section 631(1)* or *634(2)*, as the case may be;

''transferring company'' means the company by which the whole or part of a trade is transferred in the course of a transfer.

Transfer of assets generally.

[FA92 s65]

631.—(1) (*a*) This section shall apply where a company transfers the whole of a trade carried on by it in the State to another company and the consideration for the transfer consists solely of the issue to the transferring company of securities (in this section referred to as ''the new assets'') in the receiving company.

(*b*) A company which transfers part of a trade to another company shall be treated for the purposes of this section as having carried on that part of its trade as a separate trade.

(2) (*a*) The transfer shall not be treated as giving rise to any allowance or charge provided for by *section 307* or *308*.

(*b*) There shall be made to or on the receiving company in accordance with *sections 307* and *308* all such allowances and charges as would, if the transferring company had continued to carry on the trade and had continued to use the transferred assets for the purposes of the trade, have been made to or on the transferring company in respect of any assets transferred in the course of the transfer, and the amount of any such allowance or charge shall be computed as if the receiving company had been carrying on the trade since the transferring company began to do so and as if everything done to or by the transferring company had been done to or by the receiving company.

(*c*) This subsection shall not apply as respects assets transferred in the course of a transfer if in consequence of the transfer, or a transaction of which the transfer is a part, the Corporation Tax Acts are to apply subject to *subsections (6)* to *(9)* of *section 400*.

(3) For the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts—

(*a*) the transfer shall not be treated as involving any disposal by the transferring company, and

(*b*) the receiving company shall be treated as if the assets transferred to it in the course of the transfer were acquired by it at the same time and for the same consideration at which they were acquired by the transferring company and as if all things done by the transferring company relating to the assets transferred in the course of the transfer had been done by the receiving company.

(4) Where, at any time within a period of 6 years commencing on the day on which the assets were transferred in the course of the transfer, the transferring company disposes of the new assets then, for the purposes of the Capital Gains Tax Acts and, in so far as they apply to chargeable gains, the Corporation Tax Acts, in computing any chargeable gain on the disposal of any new assets—

(*a*) the aggregate of the chargeable gains less allowable losses which but for *subsection (3)(a)* would have been chargeable on the transferring company shall be apportioned between the new assets as a whole, and

(*b*) the sums allowable as a deduction under *section 552(1)(a)* shall be reduced by the amount apportioned to the new asset under *paragraph (a)*,

and, if the securities which comprise the new assets are not all of the same type, the apportionment between the securities under *paragraph (a)* shall be in accordance with their market value at the time they were acquired by the transferring company.

(5) *Subsections (2)* to *(4)* shall not apply if—

(*a*) immediately after the time of the transfer—

(i) the assets transferred in the course of the transfer are not used for the purposes of a trade carried on by the receiving company in the State,

(ii) the receiving company would not be chargeable to corporation tax or capital gains tax in respect of any chargeable gains accruing to it on a disposal, if it were to make such a disposal, of any assets (other than cash) acquired in the course of the transfer, or

(iii) any of the assets are assets in respect of which, by virtue of being of a description specified in a bilateral agreement, the receiving company is to be regarded as not liable in the State to corporation tax or capital gains tax on gains accruing to it on a disposal,

or

(*b*) the transferring company and the receiving company jointly so elect by notice in writing to the inspector, and such notice shall be made by the time by which a return is to be made by the transferring company under *section 951* for the accounting period in which the transfer takes place.

Transfer of assets by company to its parent company.

[FA92 s66]

632.—(1) Where a company disposes of an asset used for the purposes of a trade carried on by it in the State to another company which holds all of the securities representing the company's capital and but for this section the companies would not be treated in accordance with *section 617* in respect of the asset, then, if—

(*a*) immediately after the disposal the company acquiring the asset commences to use the asset for the purposes of a trade carried on by it in the State, and

(*b*) the disposal is not, or does not form part of, a transfer to which *section 631* applies,

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sections 617 to *619* shall apply as if the companies were resident in the State.

(2) *Subsection (5)* of *section 631* shall apply with any necessary modification for the purposes of this section as if references in that subsection to *subsections (2)* to *(4)* of that section were references to *subsection (1)* of this section.

Company reconstruction or amalgamation: transfer of development land.

[FA92 s67]

633.—Where a company, for the purposes of or in connection with a scheme of reconstruction or amalgamation (within the meaning of *section 615*), disposes of an asset which consists of development land (within the meaning of *section 648*) to another company and—

(*a*) the disposal is not made in the course of a transfer to which *section 631* applies, and

(*b*) the company disposing of the asset and the company acquiring the asset would, if—

(i) the definition of ''chargeable gains'' in *section 78(4)*, and

(ii) *section 649(1)*,

were deleted, be treated in accordance with *section 615(2)* in respect of that asset,

then, the companies shall be treated for the purposes of the Capital Gains Tax Acts as if the asset was acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of *section 556* the acquiring company shall be treated as if the acquisition of the asset by the other company had been the acquiring company's acquisition of the asset.

Credit for tax.

[FA92 s69]

634.—(1) In this section—

''law of the Member State which has the effect of deferring a charge to tax on a gain'' means any law of the Member State concerned which provides—

(*a*) that the gain accruing to the transferring company on the disposal of the assets in the course of the transfer is to be treated as not accruing until the disposal of the assets by the receiving company,

(*b*) that the receiving company is to be treated as having acquired the assets for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal to tax in that Member State, neither a gain nor a loss would accrue to the transferring company on the transfer and the receiving company is to be treated as if the acquisition of the assets by the transferring company had been the receiving company's acquisition of the assets, or

(*c*) such other deferral of a charge to tax as corresponds to *paragraph (a)* or *(b)*;

"relevant certificate given by the tax authorities of a Member State" means a certificate so given and which states—

(*a*) whether gains accruing to the transferring company on the transfer would have been chargeable to tax under the law of the Member State but for—

(i) the Directive, or

(ii) any provision of the law of the Member State which has the effect of deferring a charge to tax on a gain in the case of such a transfer,

(*b*) if those gains accruing would have been so chargeable, the amount of tax which would have been payable under that law if, in so far as is permitted under that law, any losses arising on the transfer are set against any gains so arising and any deductions and reliefs available to the transferring company under that law other than the provisions mentioned in *paragraph (a)* had been claimed.

(2) Where—

(*a*) a company resident in the State transfers the whole or part of a trade which immediately before the time of the transfer it carried on in a Member State (other than the State) through a branch or agency to a company not resident in the State,

(*b*) the transfer includes the whole of the assets of the transferring company used for the purposes of the trade or the part of the trade or the whole of those assets other than cash, and

(*c*) the consideration for the transfer consists wholly or partly of the issue to the transferring company of securities in the receiving company,

then, tax specified in a relevant certificate given by the tax authorities of the Member State in which the trade was so carried on shall be treated for the purposes of *Chapter 1* of *Part 35* as tax—

(i) payable under the law of that Member State, and

(ii) in respect of which credit may be allowed under a bilateral agreement.

Avoidance of tax.

[FA92 s70]

635.—Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts, *sections 631* to *634* shall not apply as respects a transfer or disposal unless it is shown that the transfer or disposal, as the case may be, is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to income tax, corporation tax or capital gains tax.

Returns.

[FA92 s71]

636.—(1) In this section, "appropriate inspector" has the same meaning as in *section 950*.

(2) Where *section 631*, *632*, *633* or *634* applies in relation to a transfer or disposal, the transferring company shall make a return of

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the transfer or disposal, as the case may be, to the appropriate inspector in such form as the Revenue Commissioners may require.

(3) Where corporation tax or capital gains tax payable by a company is to be reduced by virtue of *section 634*, a return under this section shall include a relevant certificate given by the tax authorities of the Member State in which the trade was carried on immediately before the time of the transfer.

(4) A company shall make a return under this section within 9 months from the end of the accounting period in which the transfer occurs.

Other transactions.

[FA92 s72]

637.—(1) The Revenue Commissioners may, on an application being made to them in writing in respect of a transaction—

(*a*) of a type specified in the Directive, and

(*b*) to which this Part does not apply,

give such relief as appears to them to be just and reasonable for the purposes of giving effect to the Directive.

(2) An application under this section shall be made in such form as the Revenue Commissioners may require.

Apportionment of amounts.

[FA92 s74]

638.—Where for the purposes of this Part any sum is to be apportioned and at the time of the apportionment it appears that it is material as respects the liability to tax (for whatever period) of 2 or more companies, any question which arises as to the manner in which the sum is to be apportioned shall be determined for the purposes of the tax of all those companies by the Appeal Commissioners who shall determine the question in the like manner as if it were an appeal against an assessment, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications, and all those companies shall be entitled to appear and be heard by the Appeal Commissioners or to make representations to them in writing.

TRANSACTIONS IN LAND

PART 22

Provisions Relating to Dealing In or Developing Land and Disposals of Development Land

CHAPTER 1

Income tax and corporation tax: profits or gains from dealing in or developing land

Interpretation (*Chapter 1*).

[F(MP)A68 s16(1), (2) and (4)]

639.—(1) In this Chapter, except where the context otherwise requires—

''company'' includes any body corporate;

''development'', in relation to any land, means—

(*a*) the construction, demolition, extension, alteration or reconstruction of any building on the land, or

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(*b*) the carrying out of any engineering or other operation in, on, over or under the land to adapt it for materially altered use,

and ''developing'' and ''developed'' shall be construed accordingly;

''market value'', in relation to any property, means the price which that property might reasonably be expected to fetch if sold in the open market;

''trading stock'' has the same meaning as in *section 89*;

any reference to the disposal of an interest in land includes a reference to the creation of an interest, and any reference to the acquisition of an interest in land includes a reference to the acquisition of an interest which ceases on the acquisition.

(2) For the purposes of this Chapter—

(*a*) a person shall not be regarded as disposing of an interest in land by reason of the person conveying or transferring the interest by means of security or of the person granting a lease of the land on terms which do not require the payment of any fine, premium or like sum, and

(*b*) an option or other right to acquire or dispose of any interest in any land shall be deemed to be an interest in the land.

(3) This Chapter shall apply notwithstanding *Chapter 8* of *Part 4*.

Extension of charge under Case I of Schedule D to certain profits from dealing in or developing land.

[F(MP)A68 s17; FA81 s28]

640.—(1) For the purposes of *subsection (2)*—

(*a*) a dealing in land shall be regarded as taking place where a person having an interest in any land disposes, as regards the whole or any part of the land, of that interest or of an interest which derives from that interest, and

(*b*) a person who secures the development of any land shall be regarded as developing that land.

(2) (*a*) Where apart from this section all or some of the activities of a business of dealing in or developing land would not be regarded as activities carried on in the course of a trade within Schedule D but would be so regarded if every disposal of an interest in land included among such activities (including a disposal of an interest in land which apart from this section is a disposal of the full interest in the land which the person carrying on the business had acquired) were treated as fulfilling the conditions specified in *paragraph (b)*, the business shall be deemed to be wholly a trade within Schedule D or, as the case may be, part of such a trade, and the profits or gains of that business shall be charged to tax under Case I of Schedule D accordingly.

(*b*) The conditions referred to in *paragraph (a)* are—

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(i) that the disposal was a disposal of the full interest in the land which the person carrying on the business had acquired, and

(ii) that the interest disposed of had been acquired by such person in the course of the business.

(3) Where an interest in land is disposed of in the course of the winding up of a company, the company shall for the purposes of this section be deemed not to have ceased to carry on the trade or business which it carried on before the commencement of the winding up until the completion of the disposal, or of the last such disposal where there is more than one, and the question whether any such disposal was made in the course of a business of dealing in or developing land which is, or is to be deemed to be, a trade or part of a trade shall accordingly be determined without regard to the fact that the company is being wound up.

Computation under Case I of Schedule D of profits or gains from dealing in or developing land.

[F(MP)A68 s18; FA81 s29(2)(a)]

641.—(1) Where a business of dealing in or developing land is, or is to be regarded as, a trade within Schedule D or a part of such a trade, the provisions applicable to Case I of that Schedule shall, as respects the computation of the profits or gains of the business, apply subject to *subsections (2)* to *(4)*.

(2) (*a*) Any consideration (other than rent or an amount treated as rent under *section 98*) for the disposal of an interest in any land or in a part of any land shall be treated as a consideration for the disposal of trading stock and accordingly shall be taken into account as a trading receipt.

(*b*) Any interest in any land which is held by a person carrying on a trade (in this section referred to as ''the trader'') and which has become trading stock of the trade shall thereafter, until the discontinuance of the trade, continue to be such trading stock.

(*c*) Where the trader has acquired an interest in any land otherwise than for consideration in money or money's worth, the trader shall, subject to *paragraph (d)*, be deemed to have purchased the interest for a consideration equal to its market value at the time of acquisition.

(*d*) Where at the time of acquisition of an interest in any land the trade had not been commenced or the interest was not then appropriated as trading stock, the trader shall be deemed to have purchased the interest for a consideration equal to its market value at the time of its appropriation as trading stock.

(*e*) Any consideration (other than receipts within *section 75(1)(b)* the profits or gains arising from which are by virtue of that section chargeable to tax under Case V of Schedule D) for the granting by the trader of any right in relation to the development of any land shall be taken into account as a trading receipt.

(3) Account shall not be taken of any sum (in this subsection referred to as ''the relevant sum'') which is paid or is payable at any time by the trader as consideration for the forfeiture or surrender of the right of any person to an annuity or other annual payment unless—

(*a*) the annuity or other annual payment arises under— Pt.22 S.641

(i) a testamentary disposition, or

(ii) a liability incurred for—

(I) valuable and sufficient consideration all of which is required to be taken into account in computing for the purposes of income tax or corporation tax the income of the person to whom that consideration is given, or

(II) consideration given to a person who—

(A) has not at any time carried on a business of dealing in or developing land which is, or is to be regarded as, a trade or a part of a trade, and

(B) is not and was not at any time connected with any of the following persons—

(*aa*) the trader,

(*bb*) a person who is or was at any time connected with the trader, and

(*cc*) any other person who, in the course of a business of dealing in or developing land which is, or is to be regarded as, a trade or a part of a trade, holds or held an interest in land on which the annuity or other annual payment was charged or reserved,

or

(*b*) the relevant sum is required to be taken into account in computing for the purposes of income tax or corporation tax the profits or gains of a trade of dealing in or developing land carried on by the person to whom the relevant sum is payable.

(4) (*a*) *Paragraph (b)* shall apply where—

(i) a sum (in this subsection referred to as ''the relevant sum'') is payable—

(I) by a person (in this subsection referred to as ''the relevant person'') who is not the trader, and

(II) as consideration for the forfeiture or surrender of the right (in this subsection referred to as ''the right'') of any person to an annuity or other annual payment,

(ii) the relevant sum is not required to be taken into account in computing for the purposes of income tax or corporation tax the profits or gains of a trade of dealing in or developing land carried on by the person to whom the relevant sum is payable, and

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(iii) the trader incurs expenditure (in this subsection referred to as ''the cost'') in acquiring any interest (in this subsection referred to as ''the interest'') in land on which the annuity or other annual payment had been reserved or charged.

(*b*) Where this paragraph applies—

(i) the trader shall be treated as having expended in acquiring the interest an amount equal to the amount which would have been expended if the right had not been forfeited or surrendered, and

(ii) the excess of the cost over the amount determined in accordance with *subparagraph (i)* shall be treated for the purposes of *subsection (3)* as having been payable by the trader as consideration for the forfeiture or surrender of the right.

(*c*) For the purposes of this subsection, all such apportionments and valuations shall be made as appear to the inspector or on appeal to the Appeal Commissioners to be just and reasonable.

(*d*) This subsection shall not apply where the relevant person carries on a trade of dealing in or developing land and pays the relevant sum in the course of carrying on that trade.

Transfers of interests in land between certain associated persons.

[F(MP)A68 s19]

642.—(1) Where an interest in land is disposed of by any person (in this subsection referred to as ''the disponer'') to a person connected with the disponer (in this subsection referred to as ''the transferee'') and—

(*a*) the interest is disposed of at a price greater than its market value, and

(*b*) the price—

(i) is not to be taken into account in relation to the disponer in computing for tax purposes the profits or gains of a trade which is or includes a business of dealing in or developing land, but

(ii) is to be so taken into account in relation to the transferee,

the transferee shall for tax purposes be deemed to have acquired the interest at a price equal to the market value of the interest at the time of its acquisition by the transferee.

(2) (*a*) Where an interest in land is disposed of by any person (in this subsection referred to as ''the disponer'') to a person connected with the disponer (in this subsection referred to as ''the transferee'') and—

(i) the interest is disposed of at a price less than its market value, and

(ii) the price—

(I) is not to be taken into account in relation to the transferee in computing for tax purposes the profits or gains of a trade which is or includes a business of dealing in or developing land, but

(II) is to be so taken into account in relation to the disponer,

the disponer shall for tax purposes be deemed to have disposed of the interest at a price equal to the market value of the interest at the time of the disposal by the disponer.

(*b*) A disposal by means of gift shall be regarded for the purposes of this subsection as being a disposal at a nominal price.

(3) In the application of this section to a case in which a lease is granted, any reference to price shall be construed as a reference to the fine, premium or like sum payable for the grant of the lease.

643. —(1) In this section and in *section 644*—

Tax to be charged under Case IV on gains from certain disposals of land.

[F(MP)A68 s20; FA81 s29(3)]

''capital amount'' means any amount in money or money's worth which apart from this section is not to be included in any computation of income for the purposes of the Tax Acts, and other expressions which include the word ''capital'' shall be construed accordingly;

''chargeable period'' means an accounting period of a company or a year of assessment;

''land'' includes any interest in land, and references to the land include references to all or any part of the land;

''share'' includes stock;

references to property deriving its value from land include references to—

(*a*) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value or the greater part of its value directly or indirectly from land, and

(*b*) any option, consent or embargo affecting the disposition of land.

(2) This section shall not apply to a gain accruing to an individual which by virtue of *section 604* is exempt from capital gains tax or which would be so exempt but for *subsection (14)* of that section.

(3) This section shall apply in any case where—

(*a*) land or any property deriving its value from land is acquired with the sole or main object of realising a gain from disposing of the land,

(*b*) land is held as trading stock, or

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(*c*) land is developed by a company with the sole or main object of realising a gain from disposing of the land when developed,

and any gain of a capital nature is obtained from disposing of the land—

(i) by the person acquiring, holding or developing the land, or by a person connected with that person, or

(ii) where any arrangement or scheme is effected as respects the land which enables the gain to be realised directly or indirectly by any transaction, or by any series of transactions, by any person who is a party to or concerned in the arrangement or scheme,

and this subsection shall apply whether that gain is obtained by any such person for that person's benefit or for the benefit of any other person.

(4) Where this section applies, the whole of any gain mentioned in *subsection (3)* shall for the purposes of the Tax Acts be treated—

(*a*) as being income which arises at the time when the gain is realised and which constitutes profits or gains chargeable to tax under Case IV of Schedule D for the chargeable period in which the gain is realised, and

(*b*) subject to *subsections (5)* to *(17)*, as being income of the person by whom the gain is realised.

(5) For the purposes of this section, land shall be treated as disposed of if, by any one or more transactions or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land or control over the land is effectively disposed of, and references in *subsection (3)* to the acquisition or development of land or property with the sole or main object of realising a gain from disposing of the land shall be construed accordingly.

(6) For the purposes of this section—

(*a*) where, whether by a premature sale or otherwise, a person directly or indirectly makes available to another person the opportunity of realising a gain, the gain of that other person shall be treated as having been obtained for that other person by the first-mentioned person, and

(*b*) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose is discerned in those transactions or if there is other sufficient evidence of a common purpose.

(7) In applying this section, account shall be taken of any method, direct or indirect, by which—

(*a*) any property or right is transferred or transmitted to another person, or

(*b*) the value of any property or right is enhanced or diminished,

and accordingly the occasion of the transfer or transmission of any property or right by whatever method and the occasion when the

value of any property or right is enhanced may be treated as an occasion on which tax becomes chargeable under this section. PT.22 S.643

(8) *Subsection (7)* shall apply in particular to—

(*a*) sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration,

(*b*) any method by which any property or right, or the control of any property or right, is transferred or transmitted to any person by assigning—

(i) share capital or other rights in a company,

(ii) rights in a partnership, or

(iii) an interest in settled property,

(*c*) the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo, and

(*d*) the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.

(9) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land and allowing only such expenses as are attributable to the land disposed of, and in applying this subsection—

(*a*) where an interest in land is acquired and the reversion is retained on disposal, account may be taken of the way in which the profits or gains under Case I of Schedule D of a person dealing in land are computed in such a case, and

(*b*) account may be taken of the adjustments to be made in computing such profits or gains under *sections 99(2)* and *100(4)*.

(10) *Paragraph (c)* of *subsection (3)* shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop that land was formed, and which would not be within *paragraph (a)* or *(b)* of that subsection, and in applying this subsection account shall be taken of the treatment under Case I of Schedule D of a person who appropriates land as trading stock.

(11) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person (whether or not put at the disposal of the first-mentioned person), *subsection (4)(b)* shall apply to the gain or that part of the gain with the substitution of that other person for the person by whom the gain was realised.

(12) Where there is a disposal of shares in—

(*a*) a company which holds land as trading stock, or

(*b*) a company which owns directly or indirectly 90 per cent or more of the ordinary share capital of another company which holds land as trading stock,

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and all the land so held is disposed of in the normal course of its trade by the company which held the land, and so as to procure that all opportunity of profit in respect of the land arises to that company, then, notwithstanding *subsection (3)(i)*, this section shall not apply to any gain accruing to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under *subsection (3)(ii)*).

(13) In ascertaining for the purposes of this section the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum or articles of association or other document, shall not be conclusive.

(14) For the purposes of ascertaining whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is just and reasonable.

(15) In applying this section—

(*a*) any expenditure, receipt, consideration or other amount may be apportioned by such method as is just and reasonable, and

(*b*) all such valuations shall be made as may be necessary to give effect to this section.

(16) For the purposes of this section, partners, trustees of settled property or personal representatives may be regarded as persons distinct from the individuals or other persons who are for the time being partners, trustees or personal representatives.

(17) This section shall apply to a person, whether resident in the State or not, if all or any part of the land in question is situated in the State.

Provisions supplementary to *section 643*.

[F(MP)A68 s21; FA81 s29(3)]

644.—(1) (*a*) Where a person (in this subsection referred to as ''the first-mentioned person'') is assessed to tax under *section 643* and that assessment to tax arises in consequence of and in respect of consideration receivable by another person (in this subsection referred to as ''the second-mentioned person'')—

(i) the first-mentioned person shall be entitled to recover from the second-mentioned person any part of that tax which the first-mentioned person has paid,

(ii) if any part of that tax remains unpaid at the expiration of 6 months from the date when it became due and payable, it shall be recoverable from the second-mentioned person as though the second-mentioned person were the person so assessed, but without prejudice to the right to recover the tax from the first-mentioned person, and

(iii) for the purposes of *subparagraph (i)*, the inspector shall on request furnish a certificate specifying the amount of income in respect of which

tax has been paid and the amount of tax so paid, and the certificate shall be evidence until the contrary is proved of any facts stated in the certificate.

(*b*) For the purposes of this subsection, any amount which by virtue of *section 643* is treated as the income of a person shall, notwithstanding any other provision of the Tax Acts, be treated as the highest part of the person's income.

(2) Where it appears to the Revenue Commissioners that any person entitled to any consideration or other amount chargeable to tax under *section 643* is not resident in the State, they may direct that *section 238* shall apply to any payment forming part of that amount as if the payment were an annual payment charged with tax under Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under *subsection (1)(a)(ii)*.

(3) *Section 643* shall apply subject to any provision of the Tax Acts deeming income to be income of a particular person.

(4) Where by virtue of *section 643(3)(c)* any person is charged to tax on the realisation of a gain, and by virtue of *section 643(10)* the computation of the gain proceeded on the basis that the land or some other property was appropriated at any time as trading stock, that land or other property shall also be treated on that basis for the purposes of *section 596*.

(5) Where by virtue of *section 643(11)* the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised and the tax has been paid, then, for the purposes of *sections 551* and *554*, the person for whom the capital amount was obtained or the person by whom the gain was realised, as may be appropriate, shall be regarded as having been charged to the tax so paid.

Power to obtain information.

[F(MP)A68 s22; FA81 s29(3)]

645.—(1) The inspector may by notice in writing require any person to furnish him or her within such time as may be specified in the notice (not being less than 30 days) with such particulars as the inspector thinks necessary for the purposes of *sections 643* and *644*.

(2) The particulars which a person is obliged to furnish under this section, if required by notice to do so, shall include particulars as to—

(*a*) transactions or arrangements with respect to which the person is or was acting on behalf of others,

(*b*) transactions or arrangements which in the opinion of the inspector should properly be examined for the purposes of *sections 643* and *644*, notwithstanding that in the opinion of the person to whom the notice is given no liability to tax arises under those sections, and

(*c*) whether the person to whom the notice is given has taken or is taking any transactions or arrangements of a description specified in the notice and, if so, what transactions or arrangements, and what part the person has taken or is taking in those transactions or arrangements.

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(3) Notwithstanding anything in *subsection (2)*, a solicitor shall not be deemed for the purposes of *subsection (2)(c)* to have taken part in any transaction or arrangements by reason only that he or she has given professional advice to a client in connection with the transaction or arrangements, and shall not, in relation to anything done by him or her on behalf of a client, be compellable under this section, except with the consent of the client, to do more than state that he or she is or was acting on behalf of a client, and give the name and address of the client.

Postponement of payment of income tax to be permitted in certain cases.

[F(MP)A68 s23(1) to (3) and (5)]

646.—(1) In this section, ''basis period'', in relation to any year of assessment, means the period on the profits or gains of which income tax for that year is finally computed under Case I of Schedule D in respect of the trade or, where by virtue of the Income Tax Acts the profits or gains of any other period are taken to be the profits or gains of that period, that other period.

(2) Where—

(*a*) a person (in this section referred to as ''the vendor'') carrying on a trade of dealing in or developing land (in this section referred to as ''the trade'') disposes in the course of the trade of the full interest acquired by the person in any land,

(*b*) the person to whom the disposition is made (in this section referred to as ''the purchaser'') is not connected with the vendor,

(*c*) the terms subject to which the disposition is made provide for the grant of a lease of the land by the purchaser to the vendor,

(*d*) a sum representing the value of the vendor's right to be granted a lease is to be taken into account as a consideration for the disposal in computing the profits or gains of the trade, and

(*e*) within 6 months after the time of the disposition, a lease of the land in accordance with those terms is granted by the purchaser to the vendor,

subsections (3) and *(4)* shall apply in relation to income tax for a year of assessment in the basis period for which the disposition is made.

(3) Where, at the time when any amount of income tax charged by an assessment in respect of the profits or gains of the trade would but for this subsection become due and payable, the vendor—

(*a*) retains the leasehold interest acquired by the vendor from the purchaser, and

(*b*) has not disposed, as regards the whole or any part of the land, of an interest derived from that leasehold interest,

then, a part of that amount of income tax equal to 90 per cent of so much of such tax as would not have been chargeable if no sum had to be taken into account as mentioned in *subsection (2)(d)* shall be payable in 9 equal instalments at yearly intervals the first of which is payable on the 1st day of January in the year following that in

which but for this subsection that amount of income tax would have been payable. Pt.22 S.646

(4) Where, in a case in which the postponement of payment of any amount of income tax has been authorised by *subsection (3),* the vendor—

(*a*) ceases to retain the leasehold interest acquired by the vendor from the purchaser,

(*b*) disposes, as regards the whole or any part of the land, of an interest derived from that leasehold interest,

(*c*) being an individual, dies, or

(*d*) being a company, commences to be wound up,

then, that amount of income tax or, as the case may be, so much of that amount of income tax as has not already become due and payable shall become due and payable forthwith.

647.—(1) Where— Postponement of payment of corporation tax to be permitted in certain cases.

[CTA76 s150]

(*a*) for any accounting period the profits of a company consist of or include income from a trade of dealing in or developing land in the course of which the company disposes of the full interest acquired by it in any land,

(*b*) in relation to that disposal, the conditions specified in *paragraphs (b)* to *(e)* of *section 646(2)* are satisfied, and

(*c*) at the time when any amount of corporation tax charged by an assessment for that accounting period would but for this section become due and payable the company—

(i) retains the leasehold interest acquired by it from the person to whom the disposition is made, and

(ii) has not disposed, as regards the whole or any part of the land, of an interest derived from that leasehold interest,

then, a part of that amount of corporation tax equal to 90 per cent of so much of that amount as would not have been chargeable if no sum had to be taken into account as mentioned in *section 646(2)(d)* shall be payable in 9 equal instalments at yearly intervals the first of which shall be payable on the expiration of 12 months from the date on which but for this section that amount of corporation tax would have been payable.

(2) Where, in a case in which the postponement of payment of any amount of corporation tax has been authorised by *subsection (1)*, the company—

(*a*) ceases to retain the leasehold interest acquired by it,

(*b*) disposes, as regards the whole or any part of the land, of an interest derived from that leasehold interest, or

(*c*) commences to be wound up,

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then, that amount of corporation tax or, as the case may be, so much of that amount of corporation tax as has not already become due and payable shall become due and payable forthwith.

CHAPTER 2

Capital gains tax: disposals of development land

Interpretation (*Chapter 2*).

648.—In this Chapter—

[FA82 s36(1)]

"the Act of 1963" means the Local Government (Planning and Development) Act, 1963;

"compulsory disposal" means a disposal to an authority possessing compulsory purchase powers, which is made pursuant to the exercise of those powers or the giving of formal notice of intention to exercise those powers, other than a disposal to which section 29 of the Act of 1963 applies;

"current use value"—

(*a*) in relation to land at any particular time, means the amount which would be the market value of the land at that time if the market value were calculated on the assumption that it was at that time and would remain unlawful to carry out any development (within the meaning of section 3 of the Act of 1963) in relation to the land other than development of a minor nature, and

(*b*) in relation to shares in a company (being shares deriving their value or the greater part of their value directly or indirectly from land, other than shares quoted on a stock exchange) at any particular time, means the amount which would be the market value of the shares at that time if the market value were calculated on the same assumption, in relation to the land from which the shares so derive value, as is mentioned in *paragraph (a)*;

"development land" means land in the State the consideration for the disposal of which, or the market value of which at the time at which the disposal is made, exceeds the current use value of that land at the time at which the disposal is made, and includes shares deriving their value or the greater part of their value directly or indirectly from such land, other than shares quoted on a Stock Exchange;

"development of a minor nature" means development (not being development by a local authority or a statutory undertaker within the meaning of section 2 of the Act of 1963) which, under or by virtue of section 4 of the Act of 1963, is exempted development for the purposes of the Local Government (Planning and Development) Acts, 1963 to 1993;

"relevant disposal" means a disposal of development land made on or after the 28th day of January, 1982.

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Companies chargeable to capital gains tax in respect of chargeable gains accruing on relevant disposals.

649.—(1) Notwithstanding any provision to the contrary in the Corporation Tax Acts, a company shall not be chargeable to corporation tax in respect of chargeable gains accruing to it on relevant disposals, and accordingly—

(*a*) such gains shall not be regarded as profits of the company for the purposes of corporation tax, and

(*b*) the company shall be chargeable to capital gains tax under the Capital Gains Tax Acts in respect of those gains.

[FA82 s36(4) to (6); FA92 s68(a)]

(2) *Sections 617* and *621* to *626* shall apply with any necessary modifications in relation to capital gains tax to which a company is chargeable on chargeable gains accruing to the company on a relevant disposal as they apply in relation to corporation tax on chargeable gains, and references in those sections to corporation tax shall be construed as including references to capital gains tax.

(3) (*a*) Where a company which is or has been a member of a group of companies (within the meaning of *section 616*) makes a relevant disposal of an asset which, as a result of a disposal which was not a relevant disposal, the company had acquired from another member of that group at a time when both were members of the group, the amount of the chargeable gain accruing on the relevant disposal and the capital gains tax on that gain shall be computed as if all members of the group for the time being were the same person and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of the asset by the member disposing of the asset.

(*b*) Notwithstanding *paragraph (a)*, where under *section 618(2)* or *623* a member of the group (in this paragraph referred to as ''the first-mentioned member'') had been treated as having acquired or reacquired the asset at a time later than the original acquisition or provision of the asset by the first-mentioned member or by another member of the group, as the case may be, *paragraph (a)* shall apply as if the reference in that paragraph to the acquisition or provision of the asset by the group were a reference to its acquisition or reacquisition so treated as having been made by the first-mentioned member.

Exclusion of certain disposals.

650.—*Sections 651* to *654* shall not apply to a relevant disposal made by an individual in any year of assessment if the total consideration in respect of all relevant disposals made by that individual in that year does not exceed £15,000.

[FA82 s37]

Restriction of indexation relief in relation to relevant disposals.

651.—For the purposes of computing the chargeable gain accruing to a person on a relevant disposal, the adjustment of sums allowable as deductions from the consideration for the disposal which under *section 556(2)* would otherwise be made shall be made only to—

[FA82 s38]

(*a*) such part of the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition, as is equal to the current use value of the asset at the date of the acquisition together with

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such proportion of the incidental costs to the person of the acquisition as would be referable to such value, or

(*b*) in the case of an asset to which *section 556(3)* applies, such part of the market value of the asset on the 6th day of April, 1974, as is equal to the current use value of the asset on that date.

Non-application of reliefs on replacement of assets in case of relevant disposals.

[FA82 s39; FA95 s73(1); FA97 s77(1)]

652.—(1) Consideration obtained for a relevant disposal shall not be regarded for the purposes of relief under *section 597* as having been obtained for the disposal of old assets within the meaning of that section.

(2) (*a*) In this subsection, ''the relevant local authority'', in relation to a relevant disposal, means the council of a county or the corporation of a county or other borough or, where appropriate, the urban district council, in whose functional area the land being disposed of is situated.

(*b*) *Subsection (1)* shall not apply to a relevant disposal where the relevant local authority gives a certificate in writing to the person making the disposal stating that the land being disposed of is subject to a use which, on the basis of guidelines issued by the Minister for the Environment and Local Government, is inconsistent with the protection and improvement of the amenities of the general area within which that land is situated or is otherwise damaging to the local environment.

(3) (*a*) In this subsection—

''assets of an authorised racecourse'' means assets of a racecourse which is an authorised racecourse where the assets are used for the provision of appropriate facilities or services to carry on horseracing at race meetings or to accommodate persons associated with horseracing, including members of the public;

''authorised racecourse'' has the same meaning as in section 2 of the Irish Horseracing Industry Act, 1994.

(*b*) Subject to *paragraph (c)*, *subsection (1)* shall not apply to consideration obtained for a relevant disposal where—

(i) throughout a period of 5 years ending with the time of disposal the old assets, and

(ii) the new assets within the meaning of *section 597*,

are assets of an authorised racecourse.

(*c*) *Section 597* shall apply in relation to assets of an authorised racecourse as if—

(i) references in *subsection (4)* and (5) of that section to new assets ceasing to be used for the purposes of a trade included a reference to new assets ceasing to be assets of an authorised racecourse, and

(ii) *subsection (11)(b)* had not been enacted.

(4) *Section 605* shall not apply to a relevant disposal.

(5) (*a*) In this subsection, ''farming'' has the same meaning as in *section 654*. PT.22 S.652

(*b*) *Subsection (4)* shall not apply to a relevant disposal made to an authority possessing compulsory purchase powers where—

(i) at the time of the disposal the original assets (within the meaning of *section 605*) consist of land occupied and used only for the purposes of farming, and

(ii) the disposal is made—

(I) for the purposes of enabling the authority to construct, widen or extend a road or part of a road, or

(II) for a purpose connected with or ancillary to the construction, widening or extension of a road or part of a road by the authority.

(6) *Subsections (1)* and *(4)* shall not apply to a relevant disposal made by a body of persons established for the sole purpose of promoting athletic or amateur games or sports, being a disposal which is made in relation to such of the activities of that body as are directed to that purpose.

Restriction of relief for losses, etc. in relation to relevant disposals.

[FA82 s40(1) and (2)]

653.—(1) Notwithstanding any provision to the contrary in the Capital Gains Tax Acts, any losses accruing on disposals which are not relevant disposals shall not, in the computation of a person's liability to capital gains tax in respect of chargeable gains accruing on relevant disposals, be deducted from the amount of those chargeable gains.

(2) In the computation of the amount on which under *section 31* capital gains tax is to be charged on chargeable gains accruing on relevant disposals, any allowable losses accruing on relevant disposals may be deducted in accordance with that section but, in so far as they are so deducted, they shall not be treated as relevant allowable losses within the meaning of *section 78(4)* for the purposes of the calculation required to be made under *section 78(2),* and for the purposes of this subsection any necessary assessments or additional assessments, as may be appropriate, may be made.

OTHER SPECIAL PROVISIONS

PART 23

Farming and Market Gardening

CHAPTER 1

Interpretation and general

Interpretation (*Part 23*).

[ITA67 s54(1); FA74 s13(1); FA75 s12; FA78 s12(1); FA83 s120 and Sch4]

654.—In this Part other than in *section 664*—

''farming'' means farming farm land, that is, land in the State wholly or mainly occupied for the purposes of husbandry, other than market garden land;

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''market garden land'' means land in the State occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops), and ''market gardening'' shall be construed accordingly;

''occupation'', in relation to any land other than market garden land, means having the use of that land or having the right by virtue of any easement (within the meaning of *section 96*) to graze livestock on that land.

Farming and market gardening profits to be charged to tax under Schedule D.

[ITA67 s54(2)(a); FA69 s65(1) and Sch5 PtI; FA74 s15; FA83 s11]

655.—(1) For the purposes of the Tax Acts, farming shall be treated as the carrying on of a trade or, as the case may be, of part of a trade, and the profits or gains of farming shall be charged to tax under Case I of Schedule D.

(2) Notwithstanding anything to the contrary in *Part 43*, farming carried on by any person, whether solely or in partnership, shall be treated as the carrying on of a single trade; but this subsection shall not prejudice or restrict the operation of *Chapter 3* of *Part 4* where a partnership trade of farming is set up and commenced or is permanently discontinued.

(3) Market gardening shall, for the purposes of the Tax Acts in relation to the person by whom it is carried on, be treated as a trade, and the profits or gains of market gardening shall be charged to tax under Case I of Schedule D.

Farming: trading stock of discontinued trade.

[ITA67 s 62(1) proviso; FA96 s11]

656.—(1) In this section, ''specified return date for the chargeable period'' has the same meaning as in *section 950*.

(2) Where trading stock of a trade of farming is transferred by a farmer (in this subsection referred to as ''the transferor'') to another farmer (in this subsection referred to as ''the transferee''), the transferor and the transferee may jointly elect that—

(*a*) *section 89(2)(b)* shall not apply, and

(*b*) in computing their respective profits or gains from farming, the transferor and the transferee shall include such stock at the value at which the stock is included in the accounts of the transferor at the date of discontinuance,

and such election shall be made in writing on or before the specified return date for the chargeable period in which the stock is transferred.

Averaging of farm profits.

[FA74 s16(1) to (2) and (4) to (5) and s20B (apart from proviso to subsection (2)(b)); FA75 s14(1)(a) and (b); FA77 s10; FA81 s10; FA83 s120 and Sch4; FA90 s20(2); FA97 s146(2) and Sch9 PtII]

657.—(1) In this section—

''an individual to whom *subsection (1)* applies'' means an individual carrying on farming in a year of assessment and—

(*a*) who at any time in the year of assessment is also carrying on either solely or in partnership another trade or profession,

(*b*) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment also carrying on either solely or in partnership another trade or profession, other than a trade consisting solely of the provision of accommodation in buildings on the farm land

occupied by the individual, the provision of such accommodation being ancillary to the farming of that farm land, Pt.23 S.657

(*c*) who at any time in the year of assessment is a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company, or

(*d*) whose spouse, in a case where the individual is a married person, is at any time in the year of assessment a director of a company carrying on a trade or profession and is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control, more than 25 per cent of the ordinary share capital of the company,

but *paragraphs (b)* and *(d)* shall not apply in a case where the wife of an individual is treated for tax purposes as not living with her husband;

''company'' means a company within the meaning of the Companies Act, 1963;

''director'' includes a person holding any office or employment under a company.

(2) The definition of ''an individual to whom *subsection (1)* applies'' shall apply in the case of a married person whose wife is carrying on farming, and shall apply in such a case as if the references to the individual were references to the individual's wife.

(3) For the purposes of *paragraphs (c)* and *(d)* of the definition of ''an individual to whom *subsection (1)* applies'', ordinary share capital which is owned or controlled in the manner referred to in those paragraphs by a person, being the spouse or a minor child of a director, or by the trustee of a trust for the benefit of a person or persons, being or including any such person or such director, shall be deemed to be owned or controlled by such director and not by any other person.

(4) (*a*) Subject to *paragraph (b)*, where an assessment in respect of profits or gains from farming is made for any year of assessment on an individual, other than an individual to whom *subsection (1)* applies, the individual may on giving notice in writing to that effect to the inspector within 30 days after the date of the notice of assessment elect to be charged to income tax for that year in respect of those profits or gains in accordance with *subsection (5)*, and—

(i) the Income Tax Acts shall apply in relation to the assessment as if the notice given to the inspector were a notice of appeal against the assessment under *section 933*, and

(ii) the assessment shall be amended as necessary so as to give effect to the election so made by the individual.

(*b*) This subsection shall not apply as respects any year of assessment where for either of the 2 immediately preceding years of assessment the individual was not charged to

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tax in respect of profits or gains from farming in accordance with *section 65(1)*.

(5) (*a*) An individual who is to be charged to income tax for a year of assessment in respect of profits or gains from farming in accordance with this subsection shall be so charged under Case I of Schedule D on the full amount of those profits or gains determined on a fair and just average of the profits or gains from farming of the individual in each of the 3 years ending on the date in the year of assessment to which it has been customary to make up accounts or, where it has not been customary to make up accounts, on the 5th day of April in the year of assessment.

(*b*) Any profits or gains arising to, and any loss sustained by, the individual in the 3 years referred to in *paragraph (a)* in the carrying on of farming shall be aggregated for the purposes of this subsection.

(6) (*a*) Subject to *paragraph (b)* and *subsection (7)*, where as respects a year of assessment an individual duly elects in accordance with *subsection (4)*, the individual shall be charged to income tax for that year and for each subsequent year of assessment in respect of profits or gains from farming in accordance with *subsection (5)*.

(*b*) This subsection shall not apply for any year of assessment in which the individual—

(i) is an individual to whom *subsection (1)* applies, or

(ii) is not chargeable to tax on profits or gains from farming.

(7) Where for a year of assessment an individual is by virtue of *subsection (6)* chargeable to income tax in respect of profits or gains from farming in accordance with *subsection (5)* and the individual was so chargeable for each of the 3 years of assessment immediately preceding the year of assessment, he or she may, by notice in writing given to the inspector with the return required under *section 951* for the year of assessment, elect to be charged to tax for that year of assessment in accordance with *Chapter 3* of *Part 4*; but, where in the case of an individual *subsection (6)* does not apply for any year of assessment by reason of *paragraph (b)(i)* of that subsection, the individual shall be deemed to be entitled to elect and to have duly elected, as respects that year of assessment, in accordance with this subsection.

(8) Where as respects a year of assessment an individual duly elects or is deemed to have elected in accordance with *subsection (7)*—

(*a*) the individual shall be charged to income tax for that year and for each subsequent year of assessment in accordance with *Chapter 3* of *Part 4*, and

(*b*) there shall be made such assessment or assessments, if any, as may be necessary to secure that the amount of profits or gains from farming on which the individual is charged for each of the 2 years of assessment immediately preceding the year preceding the year of assessment, as respects which the individual elects or is deemed to have elected

in accordance with *subsection (7)*, shall be not less than the amount on which the individual is charged by virtue of *subsection (6)* in accordance with *subsection (5)* for the year preceding the year of assessment.

(9) In determining for any year of assessment what capital allowances, balancing allowances or balancing charges are to be made to or on an individual in taxing a trade of farming in accordance with *subsection (5)*, the individual shall be deemed to be chargeable for that year of assessment in respect of the profits or gains of the trade in accordance with *section 65(1)*.

(10) Nothing in this section shall prejudice or restrict the operation of *section 67* in any case where a trade of farming is permanently discontinued.

(11) Where for any year of assessment a loss is aggregated with profits or gains in accordance with *subsection (5)(b)* and the amount of the loss is in excess of the profits or gains, one-third of the amount of such excess shall be deemed for the purposes of *Chapter 1* of *Part 12* to be a loss sustained in the trade of farming in the final year of the 3 years on the average of the profits or gains of which the individual is to be charged to tax for that year of assessment, and any loss so aggregated shall not be eligible for relief under any provision of the Income Tax Acts apart from this subsection.

(12) The profits or gains from farming on which an individual is to be charged to tax for any year of assessment by virtue of *subsection (6)* in accordance with *subsection (5)* shall be deemed to be the profits or gains from farming of that individual in determining his or her total income for that year for the purposes of the Income Tax Acts apart from this section, and any provision of those Acts relating to the delivery of any return, account (including balance sheet), statement, declaration, book, list or other document or the furnishing of any particulars shall apply as if this section had not been enacted.

Farming: allowances for capital expenditure on construction of buildings and other works.

[FA74 s22(1) to (3) and (5) to (11); CTA76 s21(1) and Sch1 par70; FA83 s15; FA93 s34(2); FA94 s23]

658.—(1) This section shall apply to any person carrying on farming, the profits or gains of which are chargeable to tax in accordance with *section 655*.

(2) (*a*) Where a person to whom this section applies incurs, for the purpose of a trade of farming land occupied by such person, any capital expenditure on the construction of farm buildings (excluding a building or part of a building used as a dwelling), fences, roadways, holding yards, drains or land reclamation or other works, there shall be made to such person during a writing-down period of 7 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as ''farm buildings allowances'') in respect of that expenditure and such allowances shall be made in taxing the trade.

(*b*) As respects each of the first 6 years of the writing-down period, the farm buildings allowance to be made under this subsection shall be 15 per cent of the capital expenditure referred to in *paragraph (a)* and, as respects the last year of the writing-down period, the farm buildings allowance to be made under this subsection shall be 10 per cent of that expenditure.

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(*c*) Where the capital expenditure referred to in *paragraph (a)* was incurred before the 27th day of January, 1994, this section shall apply subject to *paragraph 23* of *Schedule 32*.

(3) For the purposes of the application to this section of *section 321*, ''basis period'' has the meaning assigned to it by *section 306*.

(4) Where for any year of assessment an individual is not chargeable to income tax in respect of profits or gains from farming in accordance with *Chapter 3* of *Part 4*, and that year is a year of assessment in respect of which, if the individual had been so chargeable, he or she could have claimed a farm buildings allowance under this section, that allowance shall for the purposes of this section be deemed to have been made for that year of assessment and shall not be carried forward and set off against profits or gains chargeable for any subsequent year of assessment.

(5) Any capital expenditure incurred by a person about to carry on farming but before commencing farming shall for the purposes of this section be treated as if it had been incurred on the first day on which the person commences farming.

(6) Any claim for a farm buildings allowance to be made to a person under this section shall be included in the annual statement required to be delivered by the person under the Income Tax Acts of the profits or gains from farming, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(7) Any claim for a farm buildings allowance under this section shall be made to and determined by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to that person of the decision, appeal to the Appeal Commissioners.

(8) The Appeal Commissioners shall hear and determine an appeal to them made under *subsection (7)* as if it were an appeal against an assessment to tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(9) Subject to *subsection (10)*, where a person who is entitled to a farm buildings allowance under this section in respect of capital expenditure incurred for the purpose of farming farm land transfers such person's interest in that farm land or any part of that farm land to another person, that other person shall, to the exclusion of the first-mentioned person, be entitled to the allowances under this section for the chargeable periods following the chargeable period in which the transfer of interest took place.

(10) Where the transfer of interest to which *subsection (9)* refers takes place in relation to part of the farm land, *subsection (9)* shall apply to so much of the allowance as is properly referable to that part of the land as if it were a separate allowance.

(11) Where expenditure is incurred partly for the purposes of farming and partly for other purposes, *subsection (2)* shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the purposes of farming.

(12) No farm buildings allowance shall be made by virtue of this section in respect of any expenditure if for the same or any other chargeable period an allowance is or has been made in respect of that expenditure under *Chapter 1* of *Part 9*. PT.23 S.658

(13) Expenditure shall not be regarded for the purposes of this section as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person.

Farming: allowances for capital expenditure on the construction of farm buildings, etc. for control of pollution.

[FA97 s20(1) to (13)]

659.—(1) This section shall apply to any person—

(*a*) carrying on farming, the profits or gains of which are chargeable to tax in accordance with *section 655*,

(*b*) for whom, in respect of capital expenditure to which *paragraph (c)* refers and in respect of farm land occupied by him or her, a farm nutrient management plan has been drawn up by an agency or planner approved to draw up such plans by the Department of Agriculture and Food, and drawn up in accordance with—

(i) the guidelines in relation to such plans entitled ''Farm Nutrient Management Plan'' issued by the Department of Agriculture, Food and Forestry on the 21st day of March, 1997, or

(ii) a plan drawn up under the scheme known as the Rural Environment Protection Scheme (REPS) or the scheme known as the Erne Catchment Nutrient Management Scheme, both being schemes administered by the Department of Agriculture and Food,

and

(*c*) who incurs capital expenditure on or after the 6th day of April, 1997, and before the 6th day of April, 2000, on the construction of those farm buildings (excluding a building or part of a building used as a dwelling) or structures specified in the Table to this section in the course of a trade of farming land occupied by such person where such building or structures are constructed in accordance with that farm nutrient management plan and are certified as being necessary by that agency or planner for the purpose of securing a reduction in or the elimination of any pollution arising from the trade of farming.

(2) Subject to the provisions of Article 6 of Council Regulation (EEC) No. 2328/91 of 15 July 1991[1] on improving the efficiency of agricultural structures, as amended, and subject to *subsection (3)*, where a person to whom this section applies—

(*a*) has delivered to the Department of Agriculture and Food, a farm nutrient management plan referred to in *subsection (1)(b)*, and

(*b*) incurs capital expenditure to which *subsection (1)* applies,

[1]O.J. No. L218 of 6.8.1991, p. 1.

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there shall be made to such person during a writing-down period of 8 years beginning with the chargeable period related to that expenditure, writing-down allowances (in this section referred to as ''farm pollution control allowances'') in respect of that expenditure and such allowances shall be made in taxing the trade.

(3) The farm pollution control allowances to be made in accordance with *subsection (2)* in respect of capital expenditure incurred in a chargeable period shall be—

(*a*) as respects the first year of the writing-down period referred to in *subsection (2)*—

(i) where the capital expenditure incurred has not exceeded £20,000, an amount equal to 50 per cent of that expenditure, or

(ii) where the capital expenditure incurred has exceeded £20,000, an amount equal to £10,000,

(*b*) as respects the next 6 years of that writing-down period, an amount equal to 15 per cent of the balance of that expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*, and

(*c*) as respects the last year of that writing-down period, an amount equal to 10 per cent of the balance of that expenditure after deducting the amount of any allowance made by virtue of *paragraph (a)*.

(4) For the purposes of the application to this section of *section 321*, ''basis period'' has the meaning assigned to it by *section 306*.

(5) Any claim by a person for a farm pollution control allowance to be made to such person shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains from farming, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(6) Any claim for a farm pollution control allowance shall be made to and determined by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to the person of the decision, appeal to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them made under *subsection (6)* as if it were an appeal against an assessment to tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

(8) Subject to *subsection (9)*, where a person who is entitled to farm pollution control allowances in respect of farm land occupied by the person transfers his or her interest in that farm land or any part of that farm land to another person, that other person shall, to the exclusion of the first-mentioned person, be entitled to the allowances under this section for the chargeable periods following the chargeable period in which the transfer of interest took place.

(9) Where the transfer of interest to which *subsection (8)* refers took place in relation to part of the farm land, *subsection (8)* shall

apply to so much of the farm pollution control allowance as is properly referable to that part of the land as if it were a separate allowance. Pt.23 S.659

(10) Where expenditure is incurred partly for a purpose for which a farm pollution control allowance is to be made and partly for another purpose, *subsection (2)* shall apply to so much only of that expenditure as on a just apportionment ought fairly to be treated as incurred for the first-mentioned purpose.

(11) No farm pollution control allowance shall be made in respect of any expenditure if for the same or any other chargeable period an allowance is or has been made in respect of that expenditure under *Chapter 1* of *Part 9* or *section 658*.

(12) Expenditure shall not be regarded for the purposes of this section as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person.

(13) For the purposes only of determining, in relation to a claim for a farm pollution control allowance, whether and to what extent capital expenditure incurred on the construction of a building or structure to which this section applies is incurred or not incurred in the period specified in *subsection (1)(c)*, only such an amount of that capital expenditure as is properly attributable to work on the construction of the building or structure actually carried out during that period shall (notwithstanding any other provision of the Tax Acts as to the time when any capital expenditure is or is to be treated as incurred) be treated as having been incurred in that period.

TABLE

Farm Buildings and Structures to Which Allowances for the Control of Pollution Apply

1. Waste storage facilities including slurry tanks.
2. Soiled water tanks.
3. Effluent tanks.
4. Tank fences and covers.
5. Dungsteads and manure pits.
6. Yard drains for storm and soiled water removal.
7. Walled silos, silage bases and silo aprons.
8. Housing for cattle, including drystock accommodation, byres, loose houses, slatted houses, sloped floor houses and kennels, roofed feed or exercise yards where such houses or structures eliminate soiled water.
9. Housing for sheep and unroofed wintering structures for sheep and sheep dipping tanks.

660.—(1) In this section—

Farming: wear and tear allowances deemed to have been made in certain cases.

[FA74 s25; CTA76 s21(1) and Sch1 par71; FA78 s14(c)]

''balancing allowance'' and ''balancing charge'' have the same meanings respectively as in *Chapter 2* of *Part 9*;

''wear and tear allowance'' means an allowance made under *section 284*.

(2) In determining whether any, and if so what, wear and tear allowance, balancing allowance or balancing charge in respect of machinery or plant is to be made to or on any person for any chargeable period in taxing a trade of farming, there shall be deemed to

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have been made to that person, for every previous chargeable period in which the machinery or plant belonged to that person and which is a chargeable period to be taken into account for the purpose of this section, such wear and tear allowance or greater wear and tear allowance, if any, in respect of the machinery or plant as would have been made to that person if, in relation to every such previous chargeable period—

(*a*) the profits or gains from farming had been chargeable to tax under Case I of Schedule D,

(*b*) those profits or gains had been charged to tax in accordance with section 58 of the Income Tax Act, 1967, and not in an amount determined under section 21 of the Finance Act, 1974,

(*c*) farming had been carried on by that person since the date on which that person acquired the machinery or plant,

(*d*) the machinery or plant had been used by that person solely for the purposes of farming since that date, and

(*e*) a proper claim had been duly made by that person for wear and tear allowance in respect of the machinery or plant for every relevant chargeable period.

(3) There shall be taken into account for the purposes of this section every previous chargeable period in which the machinery or plant concerned belonged to the person and—

(*a*) during which the machinery or plant was not used by the person for the purposes of farming,

(*b*) in respect of which the person was charged to tax on an amount determined in accordance with section 21 of the Finance Act, 1974,

(*c*) during which farming was not carried on by the person, or

(*d*) during which farming was carried on by the person in such circumstances that the full amount of the profits or gains of farming was not liable to be charged to tax under Case I of Schedule D.

(4) In the case of a company (within the meaning of *section 4(1)*), *subsection (2)(c)* shall not alter the periods which are to be taken as chargeable periods but, if during any period after the 5th day of April, 1976, and after the company acquired the machinery or plant, the company has not been within the charge to corporation tax, any year of assessment or part of a year of assessment falling within that period shall be taken as a chargeable period as if it had been an accounting period of the company.

(5) Nothing in this section shall affect *section 288(4)*.

Farming: restriction of relief in respect of certain losses.

[FA78 s15(1) and (2); FA83 s120 and Sch4]

661.—(1) This section shall apply to a loss sustained by a person in the carrying on of farming in any year of assessment, being a year for which such person was not chargeable to tax in respect of profits or gains from farming.

(2) No relief shall be given under *section 382* in respect of a loss to which this section applies by deducting such loss from or setting

it off against the amount of the profits or gains from farming assessed for any year of assessment. PT.23 S.661

Income tax: restriction of relief for losses in farming or market gardening.

[FA74 s27(1) to (6); FA75 s33(2) and Sch1 PtII; FA96 s132(2) and Sch5 PtII]

662.—(1) In this section—

''prior 3 years'', in relation to a loss incurred in a year of assessment, means the last 3 years of assessment before that year;

''prior period of loss'' means the prior 3 years or, if losses were incurred in successive years of assessment amounting in the aggregate to a period longer than 3 years (and ending when the prior 3 years end), that longer period.

(2) (*a*) Any loss (including any amount in respect of allowances which by virtue of *section 392* is to be treated as a loss) incurred in a trade of farming or market gardening shall not be available for relief under *section 381* unless it is shown that, for the year of assessment in which the loss is claimed to have been incurred, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade.

(*b*) Without prejudice to *paragraph (a)*, any loss (including any amount in respect of allowances which by virtue of *section 392* is to be treated as a loss) incurred in any year of assessment in a trade of farming or market gardening shall not be available for relief under *section 381* if in each of the prior 3 years a loss was incurred in carrying on that trade.

(*c*) For the purposes of this section, the fact that a trade of farming or market gardening was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(*d*) This subsection shall not restrict relief for any loss or any capital allowance where it is shown by the claimant—

(i) that the whole of the claimant's farming or market gardening activities in the year following the prior 3 years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if those activities had been undertaken by a competent farmer or market gardener, and

(ii) that if such farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, such farmer or market gardener could not reasonably have expected those activities to become profitable until after the end of the year following the prior period of loss.

(*e*) This subsection shall not restrict relief where the carrying on of the trade forms part of and is ancillary to a larger trading undertaking.

(3) In ascertaining for the purposes of this section whether a loss was incurred in any year, the rules applicable to Case I of Schedule D shall be applied.

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(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of a year of assessment by reason of its being set up and commenced, or discontinued, or both, in that year, *subsection (2)* shall apply in relation to that trade as regards that part of that year.

(5) *Subsection (2)* shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior 3 years, and for the purposes of this subsection a trade shall be treated as discontinued and a new trade set up in any event which under the Income Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.

(6) Notwithstanding *subsection (5)*, where at any time there has been a change in the persons engaged in carrying on a trade of farming or market gardening, this section shall apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after the change without any discontinuance and as if a person and another person with whom such person is connected were the same person.

Corporation tax: restriction of relief for losses in farming or market gardening.

[CTA76 s17]

663.—(1) In this section—

''prior 3 years'', in relation to a loss incurred in an accounting period, means the last 3 years before the beginning of the accounting period.

''prior period of loss'' means the prior 3 years or, if losses were incurred in successive accounting periods amounting in all to a period longer than 3 years (and ending when the prior 3 years end), that longer period.

(2) (*a*) Any loss incurred in a trade of farming or market gardening shall not be available for relief under *section 396(2)* unless it is shown that, for the accounting period in which the loss is claimed to have been incurred, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade.

(*b*) (i) In this paragraph, ''loss computed without regard to capital allowances'' means a loss ascertained in accordance with the rules of Case I of Schedule D but so that, notwithstanding *sections 307* and *308*, no account shall be taken of any allowance or charge which otherwise would be taken into account under those sections.

(ii) Without prejudice to *paragraph (a)*, any loss incurred in any accounting period in a trade of farming or market gardening shall not be available for relief under *section 396(2)* if a loss computed without regard to capital allowances was incurred in carrying on that trade in that accounting period and in each of the accounting periods wholly or partly comprised in the prior 3 years.

(*c*) For the purposes of this section, the fact that a trade of farming or market gardening was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(*d*) This subsection shall not restrict relief for any loss where it is shown by the claimant company— Pt.23 S.663

(i) that the whole of its farming or market gardening activities in the year following the prior 3 years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if those activities had been undertaken by a competent farmer or market gardener, and

(ii) that if such farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, such farmer or market gardener could not reasonably have expected those activities to become profitable until after the end of the year following the prior period of loss.

(*e*) This subsection shall not restrict relief where the carrying on of the trade forms part of and is ancillary to a larger trading undertaking.

(3) *Subsection (2)* shall not restrict relief for any loss if the trade was set up and commenced within the prior 3 years, and for the purposes of this subsection a trade shall be treated as discontinued and a new trade set up in any event which under the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade; but a trade shall not be treated as discontinued if under *section 400(6)* it is not to be treated as discontinued for the purpose of capital allowances and charges.

(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of an accounting period by reason of its being set up and commenced, or discontinued, or both, in that accounting period, *subsection (2)* shall apply in relation to that trade as regards that part of that accounting period.

(5) Notwithstanding *subsection (3)*, where at any time there has been a change in the persons engaged in carrying on a trade of farming or market gardening, this section shall apply to any person, who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after the change without any discontinuance and as if a person and another person with whom such person is connected were the same person, and accordingly relief from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's accounting periods.

664.—(1) (*a*) In this section— Relief for certain income from leasing of farm land.

[ITA67 s195B(3) and (6); FA85 s10, FA87 s2, FA91 s10; FA93 s10(1); FA96 s10, s132(1) and Sch5 PtI par14]

''farm land'' means land in the State wholly or mainly occupied for the purposes of husbandry and includes a building (other than a building or part of a building used as a dwelling) situated on the land and used for the purposes of farming that land;

''lease'', ''lessee'', ''lessor'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*;

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''qualifying lease'' means a lease of farm land which is—

(i) in writing or evidenced in writing,

(ii) for a definite term of 5 years or more, and

(iii) made on an arm's length basis between a qualifying lessor or qualifying lessors and a lessee or lessees who is, or each of whom is, a qualifying lessee in relation to the qualifying lessor or the qualifying lessors;

''qualifying lessee'', in relation to a qualifying lessor or qualifying lessors, means an individual—

(i) who is not connected with the qualifying lessor or with any of the qualifying lessors, and

(ii) who uses any farm land leased by him or her from the qualifying lessor or the qualifying lessors for the purposes of a trade of farming carried on by him or her solely or in partnership;

''qualifying lessor'' means an individual who—

(i) is aged 55 years or over or is permanently incapacitated by reason of mental or physical infirmity from carrying on a trade of farming, and

(ii) has not after the 30th day of January, 1985, leased the farm land which is the subject of the qualifying lease from a person or persons, who is or are, or one of whom is, connected with him or her, on terms which are not such as might have been expected to be included in a lease if the negotiations for the lease had been at arm's length;

''the specified amount'', in relation to any surplus or surpluses (within the meaning of *section 97(1)*) arising in respect of the rent or the rents from any farm land let under a qualifying lease or qualifying leases, means, subject to *paragraph (b)*, the lesser of—

(i) the amount of that surplus or the aggregate amount of those surpluses,

(ii) as respects a qualifying lease or qualifying leases made—

(I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, £2,000,

(II) in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, £2,800,

(III) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991, £2,000,

(IV) in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996—

(A) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) £3,000, in any other case, or

(V) on or after the 23rd day of January, 1996—

(A) £6,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(B) £4,000, in any other case,

and

(iii) where the rent or rents was or were not receivable in respect of a full year's letting or lettings, such amount as bears to the amount determined in accordance with *clause (I)*, *(II)*, *(III)*, *(IV)* or *(V)*, as may be appropriate, of *subparagraph (ii)* the same proportion as the amount of the rent or the aggregate amount of the rents bears to the amount of the rent or the aggregate amount of the rents which would be receivable for a full year's letting or lettings.

(*b*) Where the income of a qualifying lessor consists of or includes rent or rents—

(i) from a qualifying lease or qualifying leases made in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, and from a qualifying lease made—

(I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, or

(II) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991,

the specified amount shall not exceed £2,800;

(ii) from a qualifying lease or qualifying leases made in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996, and from a qualifying lease made before the 30th day of January, 1991, the specified amount shall not exceed—

(I) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) £3,000, in any other case;

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(iii) from a qualifying lease or qualifying leases made on or after the 23rd day of January, 1996, and from a qualifying lease made at any other time, the specified amount shall not exceed—

(I) £6,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and

(II) £4,000, in any other case.

(2) Where for any year of assessment—

(*a*) the total income of a qualifying lessor consists of or includes any profits or gains chargeable to tax under Case V of Schedule D, and

(*b*) any surplus or surpluses (within the meaning of *section 97(1)*) arising in respect of the rent or rents from any farm land let under a qualifying lease or qualifying leases has been or have been taken into account in computing the amount of those profits or gains,

the qualifying lessor shall in determining that total income be entitled to a deduction of the lesser of—

(i) the specified amount in relation to the surplus or surpluses, and

(ii) the amount of the profits or gains.

(3) The amount of any deduction due under *subsection (2)* shall—

(*a*) where by virtue of *section 1017* a woman's income is deemed to be her husband's income, be determined separately as regards the part of his income which is his by virtue of that section and the part which is his apart from that section, or

(*b*) where by virtue of *section 1017* a man's income is deemed to be his wife's income, be determined separately as regards the part of her income which is hers by virtue of that section and the part which is hers apart from that section,

and where *section 1023* applies any deduction allowed by virtue of *subsection (2)* shall be allocated to the person and to his or her spouse as if they were not married.

(4) (*a*) For the purposes of *subsection (2)*, where a single qualifying lease relates to both farm land and other property, goods or services, only such amount, if any, of the surplus arising in respect of the rent payable under the lease as is determined by the inspector and after such apportionments of rent, expenses and other deductions as are necessary, according to the best of the inspector's knowledge and judgment, to be properly attributable to the lease of the farm land shall be treated as a surplus arising in respect of a rent from farm land let under a qualifying lease.

(*b*) Any amount which by virtue of *paragraph (a)* is determined by the inspector may be amended by the Appeal

Commissioners or by the Circuit Court on the hearing or the rehearing of an appeal against that determination. Pt.23 S.664

(5) For the purposes of determining the amount of any relief to be granted under this section, the inspector may by notice in writing require the lessor to furnish such information as the inspector considers necessary.

(6) (*a*) *Subsections (1)* and *(2)* of *section 459* and *section 460* shall apply to a deduction under this section as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to *section 458*.

(*b*) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall, with any necessary modifications, apply in relation to a deduction under this section.

CHAPTER 2

Farming: relief for increase in stock values

665.—In this Chapter— Interpretation (*Chapter 2*).

[FA96 s133]

''accounting period'', in relation to a person, means—

(*a*) where the person is a company, an accounting period determined in accordance with *section 27*, or

(*b*) where the person is not a company, a period of one year ending on the date to which the accounts of the person are usually made up,

but, where accounts have not been made up or where accounts have been made up for a greater or lesser period than one year, the accounting period shall be such period not exceeding one year as the Revenue Commissioners may determine;

''chargeable period'' has the same meaning as in *section 321(2)*;

''company'' has the same meaning as in *section 4*;

''period of account'', in relation to a person, means a period for which the accounts of the person have been made up;

''person'' means a person resident in the State and not resident elsewhere and, unless the contrary intention appears, includes a company;

''specified return date for the chargeable period'' has the same meaning as in *section 950*;

''trading income'', in relation to the trade of farming, means—

(*a*) where the person is a company, the income from the trade computed in accordance with the rules applicable to Case I of Schedule D, or

(*b*) in the case of any other person, the profits or gains of the trade computed in accordance with the rules applicable to Case I of Schedule D;

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''trading stock'', in relation to the trade of farming, has the same meaning as in *section 89* and, in determining the value of a person's trading stock at any time for the purposes of a deduction under *section 666*, to the extent that at or before that time any payments on account have been received by the person in respect of any trading stock, the value of that stock shall be reduced accordingly.

Deduction for increase in stock values.

[FA96 s134; FA97 s18]

666.—(1) Subject to this Chapter, where—

(*a*) a person carries on in an accounting period the trade of farming in respect of which the person is within the charge to tax under Case I of Schedule D, and

(*b*) the value of the person's trading stock of that trade at the end of the accounting period (in this Chapter referred to as its ''closing stock value'') exceeds the value of the trading stock of that trade at the beginning of the accounting period (in this Chapter referred to as its ''opening stock value''),

the person shall, in the computation for the purposes of tax of the trading income of that trade, be entitled to a deduction under this section equal to 25 per cent of the amount of that excess as if the deduction were a trading expense incurred in the accounting period, and the amount of that excess is referred to in this Chapter as the person's ''increase in stock value''.

(2) In the case of a company—

(*a*) the amount of the deduction under this section in an accounting period shall not exceed the amount of the company's trading income for that period after all reductions of income for that period by virtue of *sections 396* and *397* and after all deductions and additions for that period by virtue of *sections 307* and *308* and before any deduction allowed by virtue of this section, and

(*b*) where a deduction allowed by virtue of this section in computing the company's income from the trade of farming for an accounting period applies for an accounting period (in this subsection referred to as ''the relevant period''), the company shall not be entitled to—

(i) a deduction under *section 307* or *308* for any accounting period later than the relevant period in respect of any allowance treated as a trading loss of the trade before the commencement of the relevant period,

(ii) a set-off of a loss under *section 396* for any accounting period later than the relevant period in respect of a loss sustained in the trade before the commencement of the relevant period, or

(iii) a set-off of a loss under *section 397* for any accounting period earlier than the relevant period in respect of a loss sustained in the trade.

(3) In the case of a person other than a company, where a deduction allowed by virtue of this section in computing the person's trading profits of the trade of farming for an accounting period applies for a year of assessment (in this subsection referred to as ''the relevant year'')—

(*a*) the person shall not be entitled to relief— PT.23 S.666

(i) under *section 382* for any year of assessment later than the relevant year in respect of a loss sustained in the trade before the commencement of the relevant year, or

(ii) under *section 385* for any year of assessment earlier than the relevant year in respect of a loss sustained in the trade,

(*b*) *section 304(4)* or that section as applied by any other provision of the Income Tax Acts shall not apply as respects a capital allowance or part of a capital allowance which is or is deemed to be all or part of a capital allowance for the relevant year and to which full effect has not been given in that year because there were no profits or gains chargeable for that year or there was an insufficiency of profits or gains chargeable for that year,

(*c*) *section 392* shall not apply to the capital allowances or any part of such allowances for the relevant year, and

(*d*) the amount of any deduction given under this section shall not exceed the amount of the person's trading income from the trade of farming for the relevant year before any deduction allowed by virtue of this section.

(4) (*a*) A deduction shall not be allowed under this section in computing a company's trading income for any accounting period which ends on or after the 6th day of April, 1999.

(*b*) Any deduction allowed by virtue of this section in computing the profits or gains of the trade of farming for an accounting period of a person other than a company shall not apply for any purpose of the Income Tax Acts for any year of assessment later than the year 1998-99.

(5) A person shall not be entitled to a deduction under this section for any chargeable period unless a written claim for such a deduction is made on or before the specified return date for that chargeable period.

(6) This section shall apply to a trade of farming carried on by a partnership as it applies to a trade of farming carried on by a person.

667.—(1) In this section, ''qualifying farmer'' means an individual who— Special provisions for qualifying farmers.

[FA94 Sch6; FA96 s135; FA97 s19]

(*a*) in the year 1993-94 or any subsequent year of assessment first qualifies for grant aid under the Scheme of Installation Aid for Young Farmers operated by the Department of Agriculture and Food under Council Regulation (EEC) No. 797/85 of 12 March 1985[1] or that Regulation as may be revised from time to time, or

(*b*) (i) first becomes chargeable to income tax under Case I of Schedule D in respect of profits or gains from the

[1]O.J. No. L93 of 30.3.1985, p.6.

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trade of farming for the year 1993-94 or any subsequent year of assessment,

(ii) has not attained the age of 35 years at the commencement of the year of assessment referred to in *subparagraph (i)*, and

(iii) at any time in the year of assessment so referred to—

(I) is the holder of a qualification set out in the Table to this section (in this subparagraph referred to as ''the Table'') and, in the case of a qualification set out in subparagraph (*c*), (*d*), (*e*), (*f*) or (*g*) of paragraph 3, or in paragraph 4, of the Table, is also the holder of a certificate issued by Teagasc — The Agricultural and Food Development Authority (in this section referred to as ''Teagasc'') certifying that such person has satisfactorily attended a course of training in farm management the aggregate duration of which exceeded 80 hours; but, where Teagasc certifies that any other qualification corresponds to a qualification set out in the Table, that other qualification shall for the purposes of this subsection be treated as if it were the corresponding qualification so set out,

(II) (A) has satisfactorily attended full-time a course at a third-level institution in any discipline for a period of not less than 2 years' duration, and

(B) is the holder of a certificate issued by Teagasc certifying satisfactory attendance at a course of training in either or both agriculture and horticulture the aggregate duration of which exceeded 180 hours,

or

(III) if born before the 1st day of January, 1968, is the holder of a certificate issued by Teagasc certifying that such person has satisfactorily attended a course of training in either or both agriculture and horticulture the aggregate duration of which exceeded 180 hours.

(2) In the case of a qualifying farmer—

(*a*) *section 666(1)* shall apply as if ''100 per cent'' were substituted for ''25 per cent'';

(*b*) *paragraph (a)* shall apply in computing a person's trading profits for an accounting period in the case of an individual who becomes a qualifying farmer—

(i) on or after the 6th day of April, 1993, and before the 6th day of April, 1995, for the year of assessment 1995-96 and for each of the 3 immediately succeeding years of assessment,

(ii) on or after the 6th day of April, 1995, and before the 6th day of April, 1997, for the year of assessment in

which the individual becomes a qualifying farmer and for each of the 3 immediately succeeding years of assessment, or

(iii) on or after the 6th day of April, 1997, and before the 6th day of April, 1999, for the year of assessment in which the person becomes a qualifying farmer and for the immediately succeeding year of assessment.

TABLE

1. Qualifications awarded by Teagasc:

(*a*) Certificate in Farming;

(*b*) Diploma in Commercial Horticulture;

(*c*) Diploma in Amenity Horticulture;

(*d*) Diploma in Pig Production;

(*e*) Diploma in Poultry Production.

2. Qualifications awarded by the Farm Apprenticeship Board:

(*a*) Certificate in Farm Management;

(*b*) Certificate in Farm Husbandry;

(*c*) Trainee Farmer Certificate.

3. Qualifications awarded by a third-level institution:

(*a*) Degree in Agricultural Science awarded by the National University of Ireland through the National University of Ireland, Dublin;

(*b*) Degree in Horticultural Science awarded by the National University of Ireland through the National University of Ireland, Dublin;

(*c*) Degree in Veterinary Science awarded by the National University of Ireland through the National University of Ireland, Dublin;

(*d*) Degree in Rural Science awarded by the National University of Ireland through the National University of Ireland, Cork or by the University of Limerick;

(*e*) Diploma in Rural Science awarded by the National University of Ireland through the National University of Ireland, Cork;

(*f*) Degree in Dairy Science awarded by the National University of Ireland through the National University of Ireland, Cork;

(*g*) Diploma in Dairy Science awarded by the National University of Ireland through the National University of Ireland, Cork.

4. Certificates awarded by the National Council for Educational Awards:

(*a*) National Certificate in Agricultural Science studied through Kildalton Agricultural College and Waterford Regional Technical College;

(*b*) National Certificate in Business Studies (Agribusiness) studied through the Franciscan Brothers Agricultural College, Mountbellew, and Galway Regional Technical College.

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Compulsory disposals of livestock.

[FA96 s136]

668.—(1) In this section—

''excess'' means the excess of the relevant amount over the value of the stock to which this section applies at the beginning of the accounting period in which the disposal takes place;

''relevant amount'' means the amount of any income received by a person as a result or in consequence of a disposal of stock to which this section applies;

''stock to which this section applies'' means all cattle forming part of the trading stock of the trade of farming, where such cattle are compulsorily disposed of on or after the 6th day of April, 1993, under any statute relating to the eradication or control of diseases in livestock, and for the purposes of this section all cattle shall be regarded as compulsorily disposed of where, in the case of any disease eradication scheme relating to the eradication or control of brucellosis in livestock, all eligible cattle for the purposes of any such scheme, together with such other cattle as are required to be disposed of, are disposed of.

(2) Where stock to which this section applies is disposed of in an accounting period by a person carrying on the trade of farming, the person may elect to have the excess treated in accordance with *subsections (3)* to *(5)*, and such election shall be made in such form and contain such information as the Revenue Commissioners may require.

(3) (*a*) Notwithstanding any other provision of the Tax Acts apart from *paragraph (b)*, where a person elects in accordance with *subsection (2)*, the excess shall be disregarded as respects the accounting period in which it arises and shall instead be treated for the purposes of the Tax Acts as arising in equal instalments in each of the 2 immediately succeeding accounting periods.

(*b*) Notwithstanding *paragraph (a)*, where the person further elects, the excess shall be treated as arising in such equal instalments in the accounting period in which it arises and in the immediately succeeding accounting period.

(4) Where, not later than the end of the succeeding accounting period or succeeding accounting periods, as appropriate, referred to in *subsection (3)*, the person incurs expenditure on the replacement of cattle in an amount not less than the relevant amount, the person shall be deemed to be entitled to a deduction under *section 666* in respect of the amount of the excess, that section being applied as if ''100 per cent'' were substituted for ''25 per cent''; but, where the expenditure incurred on such replacement is less than the relevant amount, the deduction under *section 666* in each of the 2 accounting periods referred to in *paragraph (a)* or *(b)* of *subsection (3)* shall be reduced to an amount that bears the same proportion to the excess as the expenditure incurred in those 2 accounting periods bears to the relevant amount.

(5) An election under this section shall be made by notice in writing made on or before the specified return date for the chargeable period in which the stock to which this section applies is compulsorily disposed of.

[FA96 s137]

669.—(1) (*a*) Where a person has acquired or disposed of trading stock otherwise than in the normal conduct of the trade of farming, the person shall be treated for the purposes of this Chapter as having, at the beginning or end of the relevant period of account, trading stock of such value as appears to the inspector (or on appeal to the Appeal Commissioners) to be just and reasonable having regard to all the circumstances of the case.

(*b*) Where the value of a person's trading stock at the beginning of a period of account is not calculated on the basis used for the calculation of the value of the trading stock at the end of that period, the value of the trading stock at the beginning of that period shall for the purposes of this Chapter be treated as being what it would have been if it had been calculated on that basis.

(2) (*a*) In any case where a person's accounting period does not coincide with a period of account or with 2 or more consecutive periods of account, the person's increase in stock value in the accounting period shall be determined for the purposes of *section 666* not in accordance with *subsection (1)* of that section but by reference to a period (in this section referred to as ''the reference period'') determined in accordance with this subsection.

(*b*) In any case where the beginning of a person's accounting period does not coincide with the beginning of a period of account, the reference period shall begin at the beginning of the period of account which is current at the beginning of the person's accounting period.

(*c*) In any case where the end of the person's accounting period does not coincide with the end of a period of account, the reference period shall end at the end of the period of account which is current at the end of the person's accounting period.

(*d*) In any case where *paragraph (b)* does not apply, the reference period shall begin at the beginning of the person's accounting period and, in any case where *paragraph (c)* does not apply, the reference period shall end at the end of the person's accounting period.

(3) (*a*) In any case where *subsection (2)(a)* applies, a person's increase in stock value in the accounting period shall be determined for the purposes of *section 666* by the formula—

$$\frac{A \times (C - O)}{N}$$

where—

A is the number of months in the person's accounting period,

C is the value of the person's trading stock at the end of the reference period,

O is the value of the person's trading stock at the beginning of the reference period, and

N is the number of months in the reference period.

(*b*) In any case where a person's increase in stock value in an accounting period is to be determined in accordance with *paragraph (a)*, then, in *section 666* and in *subsections (4)* to *(6)*, any reference to the person's closing stock value shall be construed as a reference to the value of the person's trading stock at the end of the reference period.

(4) (*a*) A person shall not be entitled to a deduction under *section 666* for an accounting period if that accounting period ends by virtue of the person ceasing to—

(i) carry on the trade of farming,

(ii) be resident in the State, or

(iii) be within the charge to tax under Case I of Schedule D in respect of that trade.

(*b*) In any case where a person's increase in stock value in an accounting period is to be determined in accordance with *subsection (3)(a)*, *paragraph (a)* shall apply as if the reference in that paragraph to the person's accounting period were a reference to any of the accounting periods comprised in the person's reference period.

(5) (*a*) Subject to *paragraphs (b)* to *(d)*, where a person claims a deduction under *section 666* and, immediately before the beginning of an accounting period, the person was not carrying on the trade to which the claim relates, then, unless—

(i) the person acquired the initial trading stock of that trade on a sale or transfer from another person on that person's ceasing to carry on that trade, and

(ii) the stock so acquired is or is included in the person's trading stock as valued at the beginning of the accounting period,

the person shall be treated for the purposes of *section 666* and *subsections (1)* to *(4)* as having at the beginning of the accounting period trading stock of such value as appears to the inspector to be just and reasonable.

(*b*) In determining for the purposes specified in *paragraph (a)* the value of trading stock to be attributed to a person at the beginning of the accounting period, the inspector shall have regard to all the relevant circumstances of the case and in particular to—

(i) movements during the person's accounting period in the costs of items of a kind comprised in the person's trading stock during that period, and

(ii) changes during that period in the volume of the trade in question carried on by the person.

(*c*) The Appeal Commissioners dealing with an appeal from the decision of an inspector on a claim in a case where in accordance with *paragraph (a)* the inspector has attributed to a person at the beginning of an accounting period trading stock of a particular value shall, in hearing and determining the appeal in so far as it relates to the value of the trading stock to be so attributed, determine such value as appears to the Appeal Commissioners to be just and reasonable, having regard to those factors to which the inspector is required to have regard by virtue of *paragraph (b)*. Pt.23 S.669

(*d*) In any case where *subsection (2)(a)* applies to a person's accounting period, for any reference in *paragraphs (a)* to *(c)* to that accounting period there shall be substituted a reference to the reference period.

(6) In any case where a person's accounting period or reference period consists of a number of complete months and a fraction of a month, any reference in this section to the number of months in the period shall be construed as including that fraction of a month (and in any case where any such period is less than one month any such reference shall be construed as a reference to that fraction of a month of which the period consists).

PART 24

Taxation of Profits of Certain Mines and Petroleum Taxation

CHAPTER 1

Taxation of profits of certain mines

Mine development allowance.

[ITA67 s245; CTA76 s21(1) and Sch1 par10; FA80 s17(3); FA96 s132(2) and Sch5 PtII]

670.—(1) In this section—

''mine'' means a mine operated for the purpose of obtaining, whether by underground or surface working, any scheduled mineral, mineral compound or mineral substance within the meaning of section 2 of the Minerals Development Act, 1940, but, in relation to capital expenditure incurred before the 6th day of April, 1960, ''mine'' means an underground excavation made for the purpose of getting minerals;

references to capital expenditure incurred in connection with a mine shall be construed as references to capital expenditure incurred—

(*a*) in the development of the mine on searching for, or on discovering and testing, mineral deposits or winning access to such deposits, or

(*b*) on the construction of any works which are of such a nature that when the mine has ceased to be operated they are likely to have so diminished in value that their value will be nil or almost nil,

but as excluding references to—

(i) any expenditure on the acquisition of the site of the mine or of the site of any such works or of rights in or over any such site,

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(ii) any expenditure on the acquisition of, or of rights over, the deposits, or

(iii) any expenditure on works constructed wholly or mainly for subjecting the raw product of the mine to any process except a process designed for preparing the raw product for use as such;

references to assets representing capital expenditure incurred in connection with a mine shall be construed as including—

(*a*) in relation to expenditure on searching for, discovering and testing deposits, references to any information or other results obtained from any search, exploration or enquiry on which the expenditure was incurred,

(*b*) references to any part of such assets, and

(*c*) in the case of any such assets destroyed or damaged, references to any insurance moneys or other compensation moneys in respect of such destruction or damage.

(2) Expenditure shall not for the purposes of this section be regarded as having been incurred by a person carrying on the trade of working a mine in so far as the expenditure has been or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any other person (not being a person who has carried on the trade of working that mine).

(3) Any person who carries on the trade of working a mine and who has on or after the 6th day of April, 1946, incurred any capital expenditure in connection with the mine may apply for an allowance (in this section referred to as a ''mine development allowance'') in respect of that capital expenditure.

(4) Application for a mine development allowance for any chargeable period may be made to the inspector not later than 24 months after the end of that period.

(5) (*a*) Subject to *paragraph (b)*, the following provisions shall apply in relation to the amount of a mine development allowance for any chargeable period in respect of any capital expenditure incurred in connection with a mine:

(i) the inspector shall estimate to the best of his or her judgment the life (in this subsection referred to as ''the estimated life'') of the deposits, but shall not estimate such life at more than 20 years;

(ii) the inspector shall then estimate the amount of the difference (in this subsection referred to as ''the estimated difference'') between the capital expenditure incurred in connection with the mine and the amount which in his or her opinion the assets representing that capital expenditure are likely to be worth at the end of the estimated life;

(iii) the inspector shall, subject to this section, allow as the mine development allowance for that chargeable period an amount equal to a sum which bears to the estimated difference the same proportion as the length of that chargeable period bears to the length of the estimated life;

(iv) if capital expenditure incurred in connection with the mine was incurred during that chargeable period, then, that chargeable period shall for the purposes of *subparagraph (iii)* be taken to comprise so much only of that chargeable period as is subsequent to the date on which the capital expenditure was incurred.

(*b*) The total of the mine development allowances shall not exceed the estimated difference.

(6) A mine development allowance to any person carrying on the trade of working a mine shall be made in taxing that trade, and *section 304(4)* shall apply in relation to the allowance as it applies in relation to allowances to be made under *Part 9*.

(7) A mine development allowance shall not be made in respect of any capital expenditure incurred in connection with a mine in any case where the asset representing that capital expenditure is an asset in respect of which an allowance may be made under *section 284*.

(8) Where a mine development allowance for any chargeable period has been made in respect of capital expenditure incurred in connection with a mine, then, for that chargeable period *section 85* shall not apply as respects any such asset.

(9) Any capital expenditure incurred on or after the 6th day of April, 1946, in connection with a mine by a person about to carry on the trade of working the mine but before commencing such trade shall be treated for the purposes of this section as if it had been incurred on the first day of the commencement of such trade.

(10) Where mine development allowances in respect of any capital expenditure incurred in connection with a mine have been made and the mine has finally ceased to be operated, the following provisions shall apply:

(*a*) the inspector shall review the mine development allowances;

(*b*) if on such review it appears that the amount of the difference (in this subsection referred to as ''the difference'') between the capital expenditure incurred in connection with the mine and the amount which the assets representing that capital expenditure at such cessation were worth at such cessation exceeds the total of the mine development allowances, then, further mine development allowances equal to the excess may be made for any chargeable period (being the chargeable period in which the mine has finally ceased to be operated or any previous chargeable period), but the total of such further mine development allowances shall not amount to more than the excess and if necessary effect may be given to this paragraph by means of repayment;

(*c*) if on such review it appears that the difference is less than the total of the mine development allowances, then, the deficiency or the total of the mine development allowances, whichever is the less, shall be treated as a trading receipt of the trade of working the mine accruing immediately before such cessation.

(11) Where the person (in this subsection referred to as ''the vendor'') carrying on the trade of working a mine sells to any other person (not being a person who succeeds the vendor in that trade)

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any asset representing capital expenditure incurred in connection with the mine and by reference to which mine development allowances have been made, the following provisions shall apply:

(*a*) if the total of the mine development allowances when added to the sum realised on the sale of that asset is less than that capital expenditure by any amount (in this subsection referred to as ''the unexhausted allowance''), then, further mine development allowances may be granted to the vendor in respect of any chargeable period (being the chargeable period of such sale or any previous chargeable period), but the total of such further mine development allowances shall not exceed the unexhausted allowance;

(*b*) if the total of the mine development allowances when added to the sum realised on the sale of that asset exceeds that capital expenditure, then, the amount of such excess or the total of the mine development allowances, whichever is the less, shall be treated as a trading receipt of the trade accruing immediately before the sale.

(12) Where—

(*a*) mine development allowances in respect of any capital expenditure incurred in connection with a mine have been made to a person (in this subsection referred to as ''the original trader'') carrying on the trade of working the mine, and

(*b*) another person (in this subsection referred to as ''the successor'') succeeds to that trade,

mine development allowances may continue to be made in respect of that capital expenditure to the successor, but in no case shall the amount of such allowances exceed the amount to which the original trader would have been entitled if the original trader had continued to carry on that trade.

(13) Where for any chargeable period a company was entitled to relief from tax by virtue of Chapter II or Chapter III of Part XXV of the Income Tax Act, 1967, then, for the purposes of *subsections (5)* and *(10)* to *(12)*, there shall be deemed to have been made for that chargeable period in respect of any expenditure the full mine development allowance which on due claim could have been made for that chargeable period in respect of that expenditure, unless that allowance has in fact been made.

(14) An appeal to the Appeal Commissioners shall lie on any question arising under this section in the like manner as an appeal would lie against an assessment, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

Marginal coal mine allowance.

[FA74 s74; CTA76 s140(1), s164, Sch2 PtI par48 and Sch3 PtII]

671.—(1) In this section, ''marginal coal mine'' means a coal mine in the State being worked for the purpose of the production of coal and in respect of which the Minister for the Marine and Natural Resources gives a certificate stating that that Minister is satisfied that the profits derived or to be derived from the working of that mine are such that, if tax is to be charged on those profits in accordance with the Income Tax Acts, other than this section, the mine is unlikely to continue to be worked.

(2) The Minister for Finance, after consultation with the Minister for the Marine and Natural Resources, may direct in respect of a marginal coal mine that for any particular year of assessment the tax chargeable on the profits of that mine shall be reduced to such amount (including nil) as may be specified by the Minister for Finance. PT.24 S.671

(3) Where a person is carrying on the trade of working a coal mine in respect of which the Minister for Finance gives a direction under *subsection (2)* in respect of a year of assessment, an allowance shall be made as a deduction in charging the profits of that trade to tax for that year of assessment of such amount as will ensure that the tax charged in respect of the profits of that trade shall equal the amount specified by that Minister.

(4) This section shall apply for corporation tax as it applies for income tax, and references to the Income Tax Acts, to years of assessment and to a deduction in charging the profits of a trade shall apply as if they were or included respectively references to the Corporation Tax Acts, to accounting periods and to a deduction made in computing the trading income for corporation tax.

Interpretation (*sections 672* to *683*).

672.—(1) In this section and in *sections 673* to *683*, except where otherwise provided or the context otherwise requires—

[F(TPCM)A74 s1(1), (2), (6) and (7); CTA76 s21(1) and Sch1 par63; FA96 s132(1) and Sch5 PtI par8]

''development expenditure'' means capital expenditure—

(*a*) on the development of a qualifying mine, or

(*b*) on the construction of any works in connection with a qualifying mine which are of such a nature that, when the mine ceases to be operated, they are likely to have so diminished in value that their value will be nil or almost nil,

and includes interest on money borrowed to meet such capital expenditure, but does not include expenditure on—

(i) the acquisition of the site of the mine or the site of any such works or of rights in or over any such site,

(ii) the acquisition of a scheduled mineral asset, or

(iii) works constructed wholly or mainly for subjecting the raw product of the mine to any process except a process designed for preparing the raw product for use as such;

''exploration expenditure'' means capital expenditure on searching in the State for deposits of scheduled minerals or on testing such deposits or winning access to such deposits, and includes capital expenditure on systematic searching for areas containing scheduled minerals and searching by drilling or other means for scheduled minerals in those areas, but does not include expenditure on operations in the course of working a qualifying mine or expenditure which is development expenditure;

''mine development allowance'' has the same meaning as in *section 670*;

''qualifying mine'' means a mine being worked for the purpose of obtaining scheduled minerals;

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''scheduled mineral asset'' means a deposit of scheduled minerals or land comprising such a deposit or an interest in or right over such deposit or land;

''scheduled minerals'' means minerals specified in the Table to this section occurring in non-bedded deposits of such minerals.

(2) Except where provided for in *sections 674* to *676*, expenditure shall not be regarded for the purposes of this section and *sections 673* to *683* as having been incurred by a person carrying on the trade of working a qualifying mine in so far as the expenditure has been or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any other person (not being a person who has carried on the trade of working that mine).

(3) The Minister for Finance may by regulations add minerals occurring in non-bedded deposits of such minerals to the Table to this section.

(4) Every regulation made under *subsection (3)* shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

TABLE

SCHEDULED MINERALS

Barytes
Felspar
Serpentinous marble
Quartz rock
Soapstone
Ores of copper
Ores of gold
Ores of iron
Ores of lead
Ores of manganese
Ores of molybdenum
Ores of silver
Ores of sulphur
Ores of zinc.

Allowance in respect of development expenditure and exploration expenditure.

[F(TPCM)A74 s2(1) and (4); CTA76 s21(1) and Sch1 par64; FA90 s39(a)]

673.—(1) Subject to *subsections (2)* and *(3)*, where a person carrying on the trade of working a qualifying mine incurs on or after the 6th day of April, 1974, any development expenditure or exploration expenditure and makes application under *section 670* for a mine development allowance for a chargeable period in respect of such expenditure—

(*a*) that expenditure shall be deemed to be expenditure in respect of which that allowance may be granted, whether or not in the case of exploration expenditure a deposit of scheduled minerals is found as a result of the expenditure,

(*b*) the amount of such allowance for that chargeable period shall be equal to the total amount of—

(i) the exploration expenditure, and

(ii) in the case of development expenditure, the amount of the difference between that expenditure and the amount which in the opinion of the inspector the assets representing that expenditure are likely to be worth at the end of the estimated life of the qualifying mine, and

(*c*) in relation to a case in which this section has applied, any reference in the Tax Acts to an allowance made under *section 670* shall be construed as including a reference to an allowance made under that section by virtue of this section.

(2) For the purposes of this section, no account shall be taken of exploration expenditure incurred before the 1st day of April, 1990, as a result of which a deposit of scheduled minerals is not found if the expenditure was incurred more than 10 years before the date on which the person carrying on the trade of working a qualifying mine commenced to carry on that trade.

(3) No allowance shall be made under *subsection (1)* in respect of expenditure incurred before the 6th day of April, 1974, whether or not such expenditure is by virtue of any provision of the Tax Acts deemed to have been incurred on or after that date.

Expenditure on abortive exploration.

[F(TPCM)A74 s3(2) to (5); CTA76 s21(1) and Sch1 par65; FA90 s39(b)]

674.—(1) (*a*) Where a person who commences to carry on a trade of working a qualifying mine has incurred exploration expenditure and that expenditure was not incurred in connection with the qualifying mine, then, subject to *paragraph (b)*, in taxing the trade for the chargeable period in which the person commences to carry on the trade, there shall be made an allowance of an amount equal to the amount of that expenditure.

(*b*) For the purposes of *paragraph (a)*, no account shall be taken of exploration expenditure incurred before the 1st day of April, 1990, if the expenditure was incurred more than 10 years before the date on which the person commences to carry on the trade of working the qualifying mine.

(2) Where in a case referred to in *subsection (1)* the person concerned is a body corporate and there was or is, after all or part of the expenditure referred to in that subsection had been incurred by the body corporate, a change in ownership (within the meaning of *Schedule 9*) of the body corporate or of a body corporate that is a parent body or a wholly-owned subsidiary (within the meaning of *section 675*) of the first-mentioned body corporate, no allowance shall be made under this section in respect of any part of that expenditure incurred before the date of the change in ownership; but, in any case where part of the ordinary share capital of any body corporate is acquired by a Minister of the Government, such acquisition shall be disregarded in determining whether or not there was or is such a change in ownership.

(3) Where a person commences to carry on the trade of working a qualifying mine but has not incurred the exploration expenditure incurred in connection with that mine, no allowance shall be made under this section or by virtue of *section 673* in respect of exploration expenditure incurred by that person before the date on which that person commences to carry on that trade.

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(4) Subject to *paragraphs 16* and *18* of *Schedule 32*, a person shall not be entitled to an allowance in respect of the same expenditure both under this section and under some other provision of the Tax Acts.

Exploration expenditure incurred by certain bodies corporate.

[F(TPCM)A74 s4; CTA76 s21(1) and Sch1 par66; FA90 s39(c)]

675.—(1) Subject to *subsection (2)*, where exploration expenditure, in respect of which an allowance may be claimed by virtue of *section 673* or *674*, or (as respects expenditure incurred on or after the 1st day of April, 1990) by virtue of *section 673* as applied by *section 679*, is or has been incurred by a body corporate (in this section referred to as ''the exploration company'') and—

(*a*) another body corporate is or is deemed to be a wholly-owned subsidiary of the exploration company, or

(*b*) the exploration company is or is deemed to be a wholly-owned subsidiary of another body corporate,

then, the expenditure or so much of it as the exploration company specifies—

(i) in the case referred to in *paragraph (a)*, may at the election of the exploration company be deemed to have been incurred by such other body corporate (being a body corporate which is or is deemed to be a wholly-owned subsidiary of the exploration company) as the exploration company specifies,

(ii) in the case referred to in *paragraph (b)*, may at the election of the exploration company be deemed to have been incurred by the body corporate (in this paragraph referred to as ''the parent body'') of which the exploration company was, at the time the expenditure was incurred, a wholly-owned subsidiary or by such other body corporate (being a body corporate which is or is deemed to be a wholly-owned subsidiary of the parent body) as the exploration company specifies,

and, in a case where that expenditure was incurred on a date before the incorporation of the body corporate so specified, *sections 672* to *683* shall apply in relation to the granting of any allowance in respect of that expenditure as if that body corporate had been in existence at the time the expenditure was incurred and had incurred the expenditure at that time.

(2) (*a*) The same expenditure shall not be taken into account in relation to more than one trade by virtue of this section.

(*b*) Subject to *paragraphs 16* and *18* of *Schedule 32*, an allowance shall not be granted in respect of the same expenditure both by virtue of this section and under some other provision of the Tax Acts.

(3) A body corporate shall for the purposes of *subsection (1)* be deemed to be a wholly-owned subsidiary of another body corporate if and so long as all of its ordinary share capital is owned by that other body corporate, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate; but, where part of the ordinary share capital of any body corporate is held by a Minister of the Government and the remainder of the ordinary share capital of that body corporate is held by another body corporate, the

first-mentioned body corporate shall for the purposes of *subsection (1)* be deemed to be a wholly owned subsidiary of the last-mentioned body corporate.

(4) *Subsections (5)* to *(10)* of *section 9* shall apply for the purpose of determining the amount of ordinary share capital held in a body corporate through other bodies corporate.

Expenditure incurred by person not engaged in trade of mining.

[F(TPCM)A74 s5; CTA76 s21(1) and Sch1 par67]

676.—(1) Where—

(*a*) a person incurs exploration expenditure which results in the finding of a deposit of scheduled minerals, and

(*b*) without having carried on any trade which consists of or includes the working of that deposit and without any allowance or deduction under or by virtue of *sections 672* to *683* having been made to the person in respect of that expenditure, the person sells any assets representing that expenditure to another person,

then, if that other person carries on such a trade in connection with that deposit, that other person shall for the purposes of *sections 672* to *683* be deemed to have incurred, for the purposes of the trade and in connection with the deposit, exploration expenditure equal to the lesser of—

(i) the amount of the exploration expenditure represented by the assets, and

(ii) the price paid by that other person for the assets,

and that expenditure shall be deemed to have been incurred by that other person on the date on which that other person commences to carry on that trade.

(2) A person who by virtue of *subsection (1)* is deemed to have incurred an amount of exploration expenditure shall be deemed not to have incurred that amount of expenditure unless the working of the deposit results in the production of scheduled minerals in reasonable commercial quantities.

(3) Subject to *paragraphs 16* and *18* of *Schedule 32*, a deduction or allowance in respect of the same expenditure shall not be made both under this section and under some other provision of the Tax Acts.

(4) *Section 677* shall not apply to expenditure in respect of which an allowance is made by virtue of this section.

Investment allowance in respect of exploration expenditure.

[F(TPCM)A74 s6; CTA76 s21(1) and Sch1 par68]

677.—(1) Where a person carrying on the trade of working a qualifying mine incurs on or after the 6th day of April, 1974, exploration expenditure in relation to which *section 673* applies, there shall, in addition to any mine development allowance made in respect of such expenditure, be made to the person in taxing the trade for the chargeable period for which such mine development allowance is made an allowance (which shall be known as an ''exploration investment allowance'') equal to 20 per cent of such expenditure, and *section 670(6)* shall apply to an exploration investment allowance as it applies to a mine development allowance.

(2) (*a*) No allowance shall be made under this section in respect of exploration expenditure—

(i) incurred before the 6th day of April, 1974, whether or not such expenditure is by virtue of any provision

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of the Tax Acts deemed to have been incurred on or after that date, or

(ii) which is deemed to be incurred by a person other than the person who incurred the expenditure.

(*b*) *Paragraph (a)* shall not apply in respect of expenditure deemed under *section 675* to have been incurred by a body corporate other than the body corporate which incurred the expenditure.

Allowance for machinery and plant.

[F(TPCM)A74 s7(1), (3) and (4); CTA76 s21 and Sch1 pars57, 58, 59 and 69; FA71 s22(3) and (4), s23, s24 and s25; FA97 s146(1) and Sch9 PtI par7(1)]

678.—(1) Where on or after the 6th day of April, 1974, new machinery or new plant (other than vehicles suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles) is provided for use for the purposes of the trade of working a qualifying mine, that machinery or plant shall, if it is not qualifying machinery or plant, be deemed for the purpose of *section 285* to be qualifying machinery or plant.

(2) Where on or after the 6th day of April, 1974, a person carrying on the trade of working a qualifying mine incurs capital expenditure on the provision of new machinery or new plant (other than vehicles suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles) for the purposes of that trade, there shall be made to the person for the chargeable period related to the expenditure an allowance equal to 20 per cent of the expenditure, and such allowance shall be made in taxing the trade.

(3) For the purposes of ascertaining the amount of any allowance to be made to any person under *section 284* in respect of expenditure incurred during a chargeable period on any qualifying machinery or plant, no account shall be taken of an allowance under *subsection (2)* in respect of that expenditure, and in *section 284(4)* ''the allowances on that account'' and ''the allowances'' where it occurs before ''exceed'' shall each be construed as not including a reference to any allowance made under *subsection (2)* to the person by whom the trade of working a qualifying mine is carried on.

(4) Where an allowance under *subsection (2)* has been made to any person in respect of expenditure incurred on the provision of qualifying machinery or plant and the machinery or plant is sold by that person without the machinery or plant having been used by that person for the purposes of the trade of working a qualifying mine or before the expiration of the period of 2 years from the day on which the machinery or plant began to be so used, the allowance shall be withdrawn and all such additional assessments and adjustments of assessments shall be made as may be necessary for or in consequence of the withdrawal of the allowance.

(5) For the purposes of this section—

(*a*) the day on which any expenditure is incurred shall be taken to be the day when the sum in question becomes payable,

(*b*) expenditure shall not be regarded as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State, by any board established by statute or by any public or local authority,

(*c*) any expenditure incurred for the purposes of a trade by a person about to carry on the trade shall be treated as if that expenditure had been incurred by that person on the first day on which that person carries on the trade,

(*d*) capital expenditure shall not include any expenditure which is allowed to be deducted in computing for the purposes of tax the profits or gains of a trade carried on by the person incurring the expenditure, and Pt.24 S.678

(*e*) *subsections (2)* and *(3)* of *section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under this section.

(6) For the purposes of the Income Tax Acts, any claim by a person for an allowance under this section in taxing the person's trade shall be included in the annual statement required to be delivered under those Acts of the profits or gains of the person's trade and shall be accompanied by a certificate signed by the claimant (which shall be deemed to form part of the claim) stating that the expenditure was incurred on the provision of qualifying machinery or plant and giving such particulars as show that the allowance is to be made.

(7) *Section 304(4)* shall apply in relation to an allowance under *subsection (2)* as it applies in relation to allowances to be made under *Part 9*.

679.—(1) (*a*) In this section— Exploration expenditure.

[F(TPCM)A 74 s7A; FA90 s39(d)]

''exploration company'' means a company, the business of which for the time being consists primarily of exploring for scheduled minerals;

''exploring for scheduled minerals'' means searching in the State for deposits of scheduled minerals or testing such deposits or winning access to such deposits, and includes the systematic searching for areas containing scheduled minerals and searching by drilling or other means for scheduled minerals within those areas, but does not include operations which are operations in the course of developing or working a qualifying mine.

(*b*) This section shall apply as respects expenditure incurred on or after the 1st day of April, 1990.

(2) Subject to *subsections (3)* to *(5)*, for as long as a company—

(*a*) is an exploration company,

(*b*) does not carry on a trade of working a qualifying mine, and

(*c*) incurs capital expenditure (including such expenditure incurred on the provision of plant and machinery) for the purposes of exploring for scheduled minerals,

the company shall be deemed for the purposes of *sections 673*, *674(3)*, *677* and *678* and the other provisions of the Tax Acts, apart from *section 672*, *subsections (1)*, *(2)* and *(4)* of *section 674* and *sections 675*, *676*, *680*, *681*, *682* and *683*—

(i) to be carrying on a trade of working a qualifying mine,

(ii) to come within the charge to corporation tax in respect of that trade when it first incurs the capital expenditure referred to in *paragraph (c)*, and

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(iii) to incur for the purposes of that trade that expenditure incurred on the provision of plant and machinery,

so that all allowances or charges to be made for an accounting period by virtue of this subsection and *section 673*, *677* or *678* shall be given effect by treating the amount of any allowance as a trading expense of that trade in the period and by treating the amount on which any such charge is to be made as a trading receipt of that trade in the period.

(3) Where by virtue of *subsection (2)* a company is to be treated as incurring a loss in a trade in an accounting period, the company—

(*a*) shall be entitled to relief in respect of the loss under *section 157*, *subsections (1)* to *(3)* of *section 396* and *subsections (1)* and *(2)* of *section 397* as if for ''trading income from the trade'' or ''trading income'', wherever occurring in *sections 396* and *397*, there were substituted ''profits (of whatever description)'', and

(*b*) subject to *subsection (4)(b)(ii)*, shall not otherwise be entitled to relief in respect of the loss or to surrender relief under *section 420(1)* in respect of the loss.

(4) (*a*) Any asset representing exploration expenditure in respect of which an allowance or deduction has been made to a company by virtue of *subsection (2)* and *section 673* shall for the purposes of *section 670(11)* be treated as an asset representing capital expenditure incurred in connection with the mine which the company is deemed to be working by virtue of *subsection (2)*, and the company shall not cease to be deemed to be carrying on the trade of working that mine, so as to be within the charge to corporation tax in respect of that trade, before any sale of such an asset in the event of such a sale.

(*b*) Subject to *paragraph (c)*, where a company begins at any time (in this paragraph and in *paragraph (c)* referred to as ''the relevant time'') to carry on a trade of working a qualifying mine and accordingly ceases to be deemed to carry on such a trade, the company shall be treated as carrying on the same trade before and after that time for the purposes of—

(i) any allowance, charge or trade receipt treated as arising by reference to any capital expenditure incurred before the relevant time, and

(ii) relief, other than by virtue of *subsection (3)*, under *section 396(1)* for any losses arising before the relevant time, in so far as relief has not already been given for those losses by virtue of this section.

(*c*) *Paragraph (b)* shall not apply where there is a change in the ownership of the company within a period of—

(i) 12 months ending at the relevant time, or

(ii) 24 months beginning at the relevant time.

(*d*) *Schedule 9* shall apply for the purposes of supplementing this subsection.

(5) (*a*) Notwithstanding any other provision of the Tax Acts, where an allowance or deduction has been given by virtue of this section in respect of any expenditure, no other allowance or deduction shall be given by virtue of any provision of the Tax Acts, including this section, in respect of that expenditure. PT.24 S.679

(*b*) *Paragraph (b)* of *section 261* shall apply to a company for as long as it is deemed by virtue of *subsection (2)* to be carrying on a trade of working a qualifying mine as if ''who is not a company within the charge to corporation tax in respect of the payment'' were deleted from that paragraph.

Annual allowance for mineral depletion.

[F(TPCM)A74 s8; CTA76 s140 and Sch2 PtI par37]

680.—(1) Where a person carrying on the trade of working a qualifying mine incurs after the 31st day of March, 1974, capital expenditure on the acquisition of a scheduled mineral asset entitling such person to work deposits of scheduled minerals and in connection with that trade commences to work those deposits, such person shall be entitled to mine development allowances under *section 670* in respect of that capital expenditure to the extent that such person would have been entitled to such allowances if that capital expenditure had been capital expenditure incurred in the development of the mine, but *section 673* shall not apply in respect of any such expenditure.

(2) Where a person who commences to carry on the trade of working a qualifying mine on or after the 6th day of April, 1974, incurred capital expenditure before that date on the acquisition of a scheduled mineral asset in connection with that mine, such person shall for the purposes of this section be deemed to have incurred that expenditure on the day on which such person commences to carry on that trade, and *subsection (1)* shall apply accordingly.

Allowance for mine rehabilitation expenditure.

[F(TPCM)A74 s8A(1) to (9); FA96 s34; FA97 s146(1) and Sch9 PtI par7(2)]

681.—(1) (*a*) In this section—

''integrated pollution control licence'' means a licence granted under section 83 of the Environmental Protection Agency Act, 1992;

''mine rehabilitation fund'', in relation to a qualifying mine, means a fund—

(i) which consists of amounts paid by a person carrying on the trade of working a qualifying mine to another person (in this section referred to as ''the fund holder'') not connected with the first-mentioned person,

(ii) which is obliged to be maintained under the terms—

(I) of a State mining facility, or

(II) of any other agreement in writing to which the Minister is a party and to which the State mining facility is subject,

(iii) the sole purpose of which is to have available at the time a qualifying mine ceases to be worked such amount as is specified in a certificate given

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by the Minister under *subsection (2)* as being the amount which in the Minister's opinion could reasonably be expected to be necessary to meet rehabilitation expenditure in relation to the qualifying mine, and

(iv) no part of which may be paid to the person, or a person connected with that person, who is working or has worked the qualifying mine except where—

(I) the fund holder has been authorised in writing by the Minister, and by either or both the relevant local authority and the Environmental Protection Agency, to make a payment to the person or the connected person, as the case may be, for the purposes of incurring rehabilitation expenditure in relation to the qualifying mine, or

(II) an amount may be paid to the person or the connected person, as the case may be, after a certificate of completion of rehabilitation in relation to the qualifying mine has been submitted to and approved by—

(A) the Minister, and

(B) either or both the relevant local authority and the Environmental Protection Agency;

''the Minister'' means the Minister for the Marine and Natural Resources;

''qualifying mine'' means a mine being worked for the purpose of obtaining scheduled minerals, dolomite and dolomitic limestone, calcite and gypsum, or any of those minerals;

''rehabilitation expenditure'' means expenditure incurred in connection with the rehabilitation of the site of a mine or part of a mine, being expenditure incurred by a person who has ceased to work the mine in order to comply with any condition—

(i) of a State mining facility,

(ii) subject to which planning permission for development consisting of the mining and working of minerals was granted, or

(iii) subject to which an integrated pollution control licence for an activity specified in the First Schedule to the Environmental Protection Agency Act, 1992, was granted;

''rehabilitation'' includes landscaping and the carrying out of any activities which take place after the mine ceases to be worked and which are required by a condition subject to which planning permission for development consisting of the mining and working

of minerals, or an integrated pollution control licence, was granted;

''relevant local authority'', in relation to a qualifying mine, means the council of a county or the corporation of a county or other borough or, where appropriate, the urban district council, in whose functional area the mine is situated;

''relevant payments'' means payments specified in accordance with *paragraph (b)(iii)* of *subsection (2)* in a certificate given under that subsection and which are paid at or about the time specified in the certificate;

''State mining facility'', in relation to a mine, means a State mining lease, a State mining licence or a State mining permission granted by the Minister in relation to the mine.

(*b*) For the purposes of this section—

(i) any reference to the site of a mine includes a reference to land used in connection with the working of the mine, and

(ii) the net cost to any person of the rehabilitation of the site of a mine shall be the excess, if any, of rehabilitation expenditure over any receipts attributable to the rehabilitation (whether for spoil or other assets removed from the site or for tipping rights or otherwise).

(*c*) For the purposes of this section, *subsections (2)* and *(3)* of *section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance is to be made under this section.

(2) (*a*) Where in relation to a fund the Minister is of the opinion that—

(i) the matters set out in *paragraphs (i)*, *(ii)* and *(iv)* of the definition of ''mine rehabilitation fund'' are satisfied, and

(ii) the sole purpose of the fund is to have available at the time a qualifying mine ceases to be worked such amount as could reasonably be expected to be necessary to meet rehabilitation expenditure in relation to the qualifying mine,

the Minister may give a certificate to that effect.

(*b*) A certificate given under *paragraph (a)* shall, in addition to the information specified in that paragraph, specify—

(i) the number of years, being the Minister's opinion of the life (in this section referred to as ''the estimated life'') of the mine remaining at the time the certificate is given,

(ii) the amount which in the Minister's opinion could reasonably be expected to be necessary to meet

rehabilitation expenditure in relation to the qualifying mine, and

(iii) the amounts (in this section referred to as ''the scheduled payments'') required to be paid to the fund holder, and the times at which such amounts are to be paid, so as to achieve the purpose specified in *paragraph (a)(ii)*.

(*c*) The Minister may, by notice in writing given to a person to whom a certificate has been given under this section, amend the certificate.

(3) (*a*) An allowance equal to so much of any rehabilitation expenditure in relation to a qualifying mine as does not exceed the net cost of the rehabilitation of the site of the mine shall be made to a person under this section for the chargeable period related to the expenditure.

(*b*) Expenditure incurred by a person after the person ceases to carry on the trade of working a qualifying mine shall be treated as having been incurred on the last day on which the person carried on the trade.

(4) (*a*) Subject to *paragraphs (b)* and *(c)*, where the Minister has issued a certificate under *subsection (2)* in respect of a mine rehabilitation fund related to a qualifying mine, an allowance shall be made to the person who—

(i) is working the qualifying mine, and

(ii) is obliged to make relevant payments to the fund holder in relation to the fund,

for any chargeable period which falls wholly or partly in the period (in this subsection referred to as ''the funding period'') commencing on the date on which the Minister gives the certificate and ending at the end of the estimated life of the mine, and the amount of the allowance shall be an amount determined by the formula—

$$E \times \frac{N}{12} \times \frac{1}{L}$$

where—

E is the aggregate of the scheduled payments,

N is the number of months in the chargeable period, or the part of the chargeable period falling in the funding period, and

L is the number of years in the estimated life of the mine.

(*b*) The aggregate of the amounts of allowances under this subsection for a chargeable period and all preceding chargeable periods shall not exceed the aggregate of the amounts of relevant payments made in the chargeable period or its basis period and in all preceding chargeable periods or their basis periods.

(*c*) Where effect cannot be given to an allowance or part of an allowance under this subsection for a chargeable period by virtue of *paragraph (b)*, the allowance or the part of the allowance, as the case may be, shall be added to the amount of an allowance under this subsection for the following chargeable period and, subject to *paragraph (b)*, shall be deemed to be part of the allowance for that period or, if there is no such allowance for that period, shall be deemed to be the allowance for that period, and so on for succeeding periods. Pt.24 S.681

(5) Where the Minister by notice in writing amends a certificate under *subsection (2)(c)* in a chargeable period or its basis period—

(*a*) if the aggregate of the amounts of allowances made under *subsection (4)* for the chargeable period and all preceding chargeable periods exceeds the aggregate of the amounts of allowances which would have been made under that subsection for those chargeable periods if the certificate had been amended in accordance with the notice at the time the certificate was given, an amount equal to the amount of the excess shall be treated as a trading receipt of the chargeable period in which, or in the basis period for which, the certificate was amended, and

(*b*) if the aggregate of the amounts of allowances which would have been made under *subsection (4)* for the chargeable period and all preceding chargeable periods if the certificate had been amended in accordance with the notice at the time the certificate was given exceeds the aggregate of the amounts of allowances made under that subsection for those chargeable periods, the allowance under *subsection (4)* for the chargeable period shall, subject to *subsection (4)(b)*, be increased by an amount equal to the excess.

(6) (*a*) Subject to *paragraph (b)*, an amount received by a person who is working or has worked a qualifying mine, or by a person connected with such a person, from the fund holder of a mine rehabilitation fund in relation to the qualifying mine, or otherwise in connection with the mine rehabilitation fund, shall be treated as trading income of the person in accordance with this section.

(*b*) The amount to be treated as trading income for a chargeable period shall not exceed the excess of the aggregate of the amounts of allowances made under *subsections (4)* and *(5)* in that chargeable period and in any preceding chargeable periods over the aggregate amounts treated under this subsection or *subsection (5)* as trading income for all preceding chargeable periods.

(*c*) An amount to be treated under this subsection as trading income of a person shall be treated as income of—

(i) where the amount is received at any time when the person is working the qualifying mine, the chargeable period in which, or in the basis period for which, the amount is received, and

(ii) in any other case, the chargeable period in which the mine ceases to be worked.

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(*d*) Notwithstanding *paragraph (c)*, where an amount is to be treated as income of a chargeable period in accordance with *subparagraph (ii)* of that paragraph, the amount shall be assessed for the chargeable period in which, or in the basis period for which, the amount is received, and details of the receipt of the amount shall be included in the return required to be made by the person under *section 951* for that chargeable period.

(7) Where a person (in this subsection referred to as ''the first-mentioned person'') ceases to work a qualifying mine and any obligations of the first-mentioned person to rehabilitate the site of the mine are transferred to any other person, that other person shall be treated for the purposes of this section as if that other person had worked the qualifying mine and as if everything done to or by the first-mentioned person had been done to or by that other person.

(8) As respects any person who incurs rehabilitation expenditure in respect of which an allowance is made under *subsection (3)*—

(*a*) rehabilitation expenditure shall not otherwise be deductible in computing income of the person for any purpose of income tax or corporation tax,

(*b*) an allowance shall not be made in respect of the expenditure under any provision of the Tax Acts other than this section, and

(*c*) to the extent that any receipts are taken into account under *subsection (1)(b)(ii)* to determine the net cost of the rehabilitation of the site of a mine, those receipts shall not constitute income of the person for any purpose of income tax or corporation tax.

(9) An allowance under this section made to a person who is carrying on a trade of working a mine shall be made in taxing that trade, and *section 304(4)* shall apply in relation to an allowance under *subsection (4)* as it applies in relation to allowances to be made under *Part 9*.

Marginal mine allowance.

[F(TPCM)A74 s10; CTA76 s140(1), s164, Sch2 PtI par38 and Sch3 PtII]

682.—(1) In this section, ''marginal mine'' means a qualifying mine in respect of which the Minister for the Marine and Natural Resources gives a certificate stating that that Minister is satisfied that the profits derived or to be derived from the working of that mine are such that, if tax is to be charged on those profits in accordance with the Income Tax Acts, other than this section, the mine is unlikely to be worked or to continue to be worked.

(2) The Minister for Finance, after consultation with the Minister for the Marine and Natural Resources, may direct in respect of a marginal mine that for any particular year of assessment the tax chargeable on the profits of that qualifying mine shall be reduced to such amount (including nil) as may be specified by the Minister for Finance.

(3) Where a person is carrying on the trade of working a qualifying mine in respect of which the Minister for Finance gives a direction under *subsection (2)* in respect of a year of assessment, an allowance (which shall be known as a ''marginal mine allowance'') shall be made as a deduction in charging the profits of that trade to income tax for that year of assessment of such amount or amounts as will

ensure that the tax charged in respect of the profits of that trade shall equal the amount specified by that Minister. Pt.24 S.682

(4) This section shall apply for corporation tax as it applies for income tax, and the references to the Income Tax Acts, to a year of assessment and to charging the profits of that trade to income tax shall apply as if they were respectively references to the Corporation Tax Acts, to an accounting period and to computing the profits of that trade for the purposes of corporation tax.

Charge to tax on sums received from sale of scheduled mineral assets.

[F(TPCM)A74 s11; CTA76 s140(1) and Sch2 PtI par39; FA81 s9(e)]

683.—(1) In this section—

''chargeable period'' means an accounting period of a company or a year of assessment;

any reference to the sale of a right to a scheduled mineral asset includes a reference to the grant of a licence to work scheduled minerals.

(2) Where a person resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, the person shall, subject to this section, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by the person on an amount equal to that sum; but where the person is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid, elects by notice in writing to the inspector to be charged to tax for that year of assessment and for each of the 5 succeeding years of assessment on an amount equal to one-sixth of that sum, the person shall be so charged.

(3) (*a*) In this subsection, ''tax'' shall mean income tax, unless the seller of the scheduled mineral asset, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.

(*b*) Subject to *paragraph (c)*, where a person not resident in the State sells any scheduled mineral asset and the net proceeds of the sale consist wholly or partly of a capital sum, then—

(i) the person shall be charged to tax in respect of that sum under Case IV of Schedule D for the chargeable period in which the sum is received by the person, and

(ii) *section 238* shall apply to that sum as if it were an annual payment payable otherwise than out of profits or gains brought into charge to tax.

(*c*) Where the person referred to in *paragraph (b)* is an individual who, not later than 24 months after the end of the year of assessment in which the sum is paid elects by notice in writing to the Revenue Commissioners that the sum shall be treated for the purpose of tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in his or her income chargeable to tax for each of those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election; but—

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(i) the election shall not affect the amount of tax to be deducted and accounted for under *section 238*,

(ii) where any sum is deducted under *section 238*, any adjustments necessary to give effect to the election shall be made by means of repayment of tax, and

(iii) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of, or of any part of, that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately to be paid for that year is less than the amount of tax paid for that year.

(4) Where the scheduled mineral asset sold by a person was acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, *subsections (2)* and *(3)* shall apply as if any capital sum received by the person when the person sells the asset were reduced by the amount of that sum; but nothing in this subsection shall affect the amount of tax to be deducted and accounted for under *section 238* by virtue of *subsection (3)*, and where any sum is deducted under *section 238* any adjustment necessary to give effect to this subsection shall be made by means of repayment of tax.

(5) Where by virtue of an order made by the Minister for the Marine and Natural Resources under section 14 of the Minerals Development Act, 1940, scheduled minerals or rights to work such minerals are acquired and that Minister pays compensation to any person in respect of such acquisition, that person shall be deemed for the purposes of this section to have sold a scheduled mineral asset for a capital sum equal to the amount of compensation paid to that person, and *subsections (2)* to *(4)* shall apply to the compensation as they apply to a capital sum received in respect of a sale of a scheduled mineral asset.

CHAPTER 2

Petroleum taxation

Interpretation (*Chapter 2*).

684.—(1) In this Chapter—

[FA92 s75; FA95 s42(a)]

''abandonment activities'', in relation to a relevant field or any part of it, means those activities of a person, whether carried on by the person or on behalf of the person, which comply with the requirements of a petroleum lease held by the person, or, if the person is a company, held by the company or a company associated with it, in respect of—

(*a*) the closing down, decommissioning or abandonment of the relevant field or the part of it, as the case may be, or

(*b*) the dismantlement or removal of the whole or a part of any structure, plant or machinery which is not situated on dry land and which has been brought into use for the purposes of transporting as far as dry land petroleum won from the relevant field or from the part of it, as the case may be;

''abandonment expenditure'', in relation to a relevant field or any part of it, means expenditure incurred on abandonment activities in relation to the field or the part of it, as the case may be; Pt.24 S.684

''chargeable period'' means an accounting period of a company or a year of assessment;

''designated area'' means an area designated by order under section 2 of the Continental Shelf Act, 1968;

''development expenditure'' means capital expenditure incurred in connection with a relevant field on the provision for use in carrying on petroleum extraction activities of—

(*a*) machinery or plant,

(*b*) any works, buildings or structures, or

(*c*) any other assets,

which are of such a nature that when the relevant field ceases to be worked they are likely to be so diminished in value that their value will be nil or almost nil, but does not include—

(i) expenditure on any vehicle suitable for the conveyance by road of persons or goods or the haulage by road of other vehicles,

(ii) expenditure on any building or structure for use as a dwelling house, shop or office or for any purpose ancillary to the purposes of a dwelling house, shop or office,

(iii) (I) expenditure incurred on petroleum exploration activities, and

(II) payments made to the Minister for the Marine and Natural Resources on the application for, or in consideration of the granting of, a licence (other than a petroleum lease) or other payments made to that Minister in respect of the holding of the licence,

(iv) expenditure on the acquisition of the site of a relevant field, or of the site of any works, buildings or structures or of rights in or over any such site,

(v) expenditure on the acquisition of, or of rights in or over, deposits of petroleum,

(vi) expenditure on—

(I) machinery or plant, or

(II) works, buildings or structures,

provided for the processing or storing of petroleum won in the course of carrying on petroleum extraction activities, other than the initial treatment and storage of such petroleum,

or

(vii) any interest payment,

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and ''assets representing development expenditure'' shall be construed accordingly and shall include any results obtained from any search or enquiry on which the expenditure was incurred;

''dry land'' means land not permanently covered by water;

''exploration expenditure'' means—

(*a*) capital expenditure incurred on petroleum exploration activities, and

(*b*) payments made to the Minister for the Marine and Natural Resources on the application for, or in consideration of the granting of, a licence (other than a petroleum lease) or other payments made to that Minister in respect of the holding of the licence,

but does not include any interest payment, and ''assets representing exploration expenditure'' shall be construed accordingly and shall include any results obtained from any search, exploration or enquiry on which the expenditure was incurred;

''initial treatment and storage'', in relation to petroleum won from a relevant field, means the doing of any of the following—

(*a*) subjecting petroleum so won to any process of which the sole purpose is to enable the petroleum to be safely stored, safely loaded into a tanker or safely accepted for refining,

(*b*) separating petroleum so won and consisting of gas from other petroleum so won,

(*c*) separating petroleum won and consisting of gas of a kind that is transported and sold in normal commercial practice from other petroleum so won and consisting of gas,

(*d*) liquefying petroleum so won and consisting of gas of such a kind as is mentioned in *paragraph (c)* for the purpose of transporting such petroleum,

(*e*) subjecting petroleum so won to any process so as to secure that petroleum disposed of without having been refined has the quality that is normal for petroleum so disposed of from the relevant field, or

(*f*) storing petroleum so won before its disposal or its appropriation to refining or to any use, except use in—

(i) winning petroleum from a relevant field, including searching in that field for and winning access to such petroleum, or

(ii) transporting as far as dry land petroleum that is won from a place not on dry land,

but does not include any activity carried on as part of or in association with the refining of petroleum;

''licence'' means—

(*a*) an exploration licence,

(*b*) a lease undertaking,

(*c*) a licensing option,

(*d*) a petroleum prospecting licence,

(*e*) a petroleum lease, or

(*f*) a reserved area licence,

granted in respect of an area in the State or a designated area under the Petroleum and Other Minerals Development Act, 1960, and which was granted subject to—

(i) the licensing terms set out in the Notice entitled ''Ireland Exclusive Offshore Licensing Terms'' presented to each House of the Oireachtas on the 29th day of April, 1975,

(ii) licensing terms presented to each House of the Oireachtas on a day or days which fall after the 29th day of April, 1975, or

(iii) licensing terms to which *paragraph (i)* or *(ii)* relates, as amended or varied from time to time;

''licensed area'' means an area in respect of which a licence is in force;

''mining trade'' means a trade consisting only of working a mine which is a qualifying mine or, in the case of a trade consisting partly of such an activity and partly of one or more other activities, the part of the trade consisting only of working such a mine which is treated by virtue of *section 685* as a separate trade;

''petroleum'' means petroleum (within the meaning of section 2(1) of the Petroleum and Other Minerals Development Act, 1960) won or capable of being won under the authority of a licence;

''petroleum activities'' means any one or more of the following activities—

(*a*) petroleum exploration activities,

(*b*) petroleum extraction activities, and

(*c*) the acquisition, enjoyment or exploitation of petroleum rights;

''petroleum exploration activities'' means activities of a person carried on by the person or on behalf of the person in searching for deposits of petroleum in a licensed area, in testing or appraising such deposits or in winning access to such deposits for the purposes of such searching, testing or appraising, where such activities are carried on under a licence (other than a petroleum lease) authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it;

''petroleum extraction activities'' means activities of a person carried on by the person or on behalf of the person under a petroleum lease authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it in—

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(*a*) winning petroleum from a relevant field, including searching in that field for and winning access to such petroleum,

(*b*) transporting as far as dry land petroleum so won from a place not on dry land, or

(*c*) effecting the initial treatment and storage of petroleum so won from the relevant field;

''petroleum profits'', in relation to a company which is chargeable to corporation tax on its profits, means the income of the company from petroleum activities and any amount to be included in its total profits in respect of chargeable gains accruing to the company from disposals of petroleum-related assets;

''petroleum-related asset'' means any of the following assets or any part of such an asset—

(*a*) any petroleum rights,

(*b*) any asset representing exploration expenditure or development expenditure,

(*c*) shares deriving their value or the greater part of their value, whether directly or indirectly, from petroleum activities, other than shares dealt in on a stock exchange;

''petroleum rights'' means rights to petroleum to be extracted or to interests in, or to the benefit of, petroleum, and includes an interest in a licence;

''petroleum trade'' means a trade consisting only of trading activities which are petroleum activities or, in the case of a trade consisting partly of such activities and partly of other activities, the part of the trade consisting only of trading activities which are petroleum activities which is treated by virtue of *section 685* as a separate trade;

''qualifying mine'' has the same meaning as in *section 672*;

''relevant field'' means an area in respect of which a licence, being a petroleum lease, is in force.

(2) For the purposes of this Chapter, 2 companies shall be associated with one another if—

(*a*) one company is a 51 per cent subsidiary of the other company,

(*b*) each company is a 51 per cent subsidiary of a third company, or

(*c*) one company is owned by a consortium of which the other company is a member,

and for the purposes of *paragraph (c)* a company shall be owned by a consortium if all the ordinary share capital of that company is directly and beneficially owned between them by 5 or fewer companies, which companies are in this Chapter referred to as ''the members of the consortium''.

Pt.24
Separation of trading activities.

[FA92 s76]

685.—(1) Where a person carries on any petroleum activities as part of a trade and those activities apart from any other activity would constitute a trade, those activities shall be treated for the purposes of the Tax Acts and the Capital Gains Tax Acts as a separate trade distinct from all other activities carried on by the person as part of the trade, and any necessary apportionment shall be made of receipts and expenses.

(2) Where a person works a qualifying mine as part of a trade, that activity shall be treated for the purposes of this Chapter as a separate trade distinct from all other activity carried on by the person as part of the trade, and any necessary apportionment shall be made of receipts and expenses.

Reduction of corporation tax.

[FA92 s77; FA95 s42(b)]

686.—(1) In this section—

''petroleum profits on which corporation tax falls finally to be borne'', in relation to a company, means the amount of the petroleum profits of the company after making all deductions and giving or allowing all reliefs that for the purposes of corporation tax are made from, or given or allowed against, or are treated as reducing—

(*a*) those profits, or

(*b*) income or chargeable gains, if any, included in those profits;

''relevant petroleum lease'' means a petroleum lease in respect of a relevant field, being a field discovered by petroleum exploration activities carried on under a licence (other than a petroleum lease) which authorises the carrying on of those activities for a period which, apart from any extension of the period or revision or renewal of the licence—

(*a*) is not longer than 10 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2003,

(*b*) is longer than 10 years but not longer than 15 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2007, or

(*c*) is longer than 15 years, where the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2013,

but a petroleum lease in respect of a relevant field shall be a relevant petroleum lease where—

(i) the field was discovered under a lease which is not a licence,

(ii) the lease under which the field was discovered expired before the petroleum lease is granted, and

(iii) the petroleum lease is granted by the Minister for the Marine and Natural Resources before the 1st day of June, 2003.

(2) (*a*) Subject to *paragraph (b)*, corporation tax payable by a company for an accounting period shall be reduced by the amount, if any, determined by the formula—

$$I \times \frac{R - 25}{100}$$

where—

I is the amount for the accounting period of the income to which this section applies, and

R is the rate per cent of corporation tax specified in *section 21(1)* for the financial year or years in which the accounting period falls.

(*b*) Notwithstanding *paragraph (a)*, where part of the accounting period falls in one financial year (in this paragraph referred to as ''the first-mentioned financial year'') and the other part falls in the financial year succeeding the first-mentioned financial year and different rates of corporation tax are in force under *section 21(1)* for each of those years, then, R in *paragraph (a)* shall be the rate per cent determined by the formula—

$$\frac{(A \times C)}{E} + \frac{(B \times D)}{E}$$

where—

A is the rate per cent in force for the first-mentioned financial year,

B is the rate per cent in force for the financial year succeeding the first-mentioned financial year,

C is the length of that part of the accounting period falling in the first-mentioned financial year,

D is the length of that part of the accounting period falling in the financial year succeeding the first-mentioned financial year, and

E is the length of the accounting period.

(3) The income to which this section applies shall be the income of a company for an accounting period determined by the formula—

$$(F - G) \times \frac{S}{T}$$

where—

F is the amount for the accounting period of the company's petroleum profits on which corporation tax falls finally to be borne,

G is the amount to be included in the company's profits brought into charge to corporation tax for the accounting period in respect of chargeable gains accruing to the company from disposals of petroleum-related assets,

S is the aggregate of the income of the company for the accounting period which is—

(*a*) trading income attributable to sales of petroleum won by the company, or

(*b*) income, other than trading income, from the enjoyment or exploitation of petroleum rights, Pt.24 S.686

under a relevant petroleum lease granted to the company or a company associated with the company, and

T is the aggregate of the income of the company for the accounting period from its petroleum trade or other petroleum activities.

(4) For the purposes of *subsection (3)*, the income of a company for an accounting period which is trading income attributable to sales of petroleum won by the company under a relevant petroleum lease shall be the income, if any, determined by the formula—

$$O \times \frac{P}{Q}$$

where—

O is the income of the company for the accounting period from its petroleum trade,

P is the aggregate of money or money's worth receivable by the company from sales in the accounting period of petroleum won by it under the relevant petroleum lease, and

Q is the aggregate of money or money's worth receivable by the company from sales of petroleum in the accounting period in the course of carrying on its petroleum trade.

687.—(1) Notwithstanding *sections 381* and *396(2)*— Treatment of losses.

[FA92 s78]

(*a*) as respects a loss incurred by a person in a petroleum trade, relief shall not be given—

(i) under *section 381* against any income other than income arising from petroleum activities, or

(ii) under *section 396(2)* against any profits other than petroleum profits,

and

(*b*) as respects any loss, other than a loss incurred in a petroleum or a mining trade, incurred by a person, relief shall not be given—

(i) under *section 381* against income arising from petroleum activities, or

(ii) under *section 396(2)* against petroleum profits.

(2) Notwithstanding *sections 383* and *399(1)*, the amount of any income of a person which is within the charge to tax under Case IV of Schedule D, and which is income arising from petroleum activities, shall not be reduced by the amount of any loss which may be relieved under *section 383* or *399(1)*, other than a loss incurred in petroleum activities, and the amount of any loss so incurred shall not be treated under either of those sections as reducing the amount of any income other than income arising from petroleum activities.

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(3) Notwithstanding *sections 305(1)(b)* and *308(4)*, a capital allowance which is to be given by discharge or repayment of tax, or in charging income under Case V of Schedule D, shall not to any extent be given effect—

(*a*) under *section 305* against income arising from petroleum activities, or

(*b*) under *section 308(4)* against petroleum profits.

Treatment of group relief.

[FA92 s79]

688.—(1) In this section, ''claimant company'' and ''surrendering company'' have the meanings respectively assigned to them by *section 411*.

(2) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief shall not be allowed against any petroleum profits of the claimant company except to the extent that the claim relates to—

(*a*) a loss incurred by the surrendering company in a petroleum or mining trade, or

(*b*) charges on income paid, other than to a connected person, by the surrendering company which consist of payments made wholly and exclusively for the purposes of such a trade,

and group relief in respect of any such loss incurred by the surrendering company, or in respect of any charge on income paid by the surrendering company which is a payment made wholly and exclusively for the purposes of the petroleum or mining trade, shall not be allowed against any profits of the claimant company other than its petroleum profits.

Restriction of relief for losses on certain disposals.

[FA92 s80(1) and (2)]

689.—(1) Notwithstanding any provision of the Capital Gains Tax Acts or of the Corporation Tax Acts relating to the deduction of allowable losses for the purposes of capital gains tax or of corporation tax on chargeable gains—

(*a*) an allowable loss accruing on a disposal of an asset other than a petroleum-related asset shall not be deducted from the amount of a chargeable gain accruing on a disposal of a petroleum-related asset, and

(*b*) an allowable loss accruing on a disposal of a petroleum-related asset shall not be deducted from the amount of a chargeable gain accruing on a disposal of an asset other than a petroleum-related asset.

(2) *Subsection (11)* of *section 597* shall apply as respects the application of that section to a disposal of assets which have been used by the person disposing of them for the purposes of a petroleum trade as if each reference in that subsection to a ''trade'' or ''trades'' were respectively a reference to a ''petroleum trade'' or ''petroleum trades'' within the meaning of this Chapter.

Interest and charges on income.

[FA92 s81(1) to (5) and (7)]

690.—(1) In computing the amount of—

(*a*) a person's profits or gains for the purposes of income tax, or

(*b*) a person's income for the purposes of corporation tax, PT.24 S.690

arising from a petroleum trade, no deduction shall be made in respect of—

(i) any interest payable by the person to a connected person to the extent that the amount of the interest exceeds for whatever reason the amount which, having regard to all the terms on which the money in respect of which it is payable was borrowed and the standing of the borrower, might have been expected to be payable if the lender and the borrower had been independent parties dealing at arm's length,

(ii) interest payable by the person on any money borrowed to meet expenditure incurred on petroleum exploration activities, or

(iii) interest payable by the person on any money borrowed to meet expenditure incurred in acquiring petroleum rights from a connected person.

(2) *Section 130(2)(d)(iv)* shall not apply to so much of any interest as—

(*a*) would but for *section 130(2)(d)(iv)* be deductible in computing the amount of a company's income from a petroleum trade,

(*b*) would not be precluded by *subsection (1)* from being so deducted, and

(*c*) is interest payable to a company which is a resident of the United States of America or of a territory with the government of which arrangements having the force of law by virtue of *section 826* have been made,

and for the purposes of *paragraph (c)* ''resident of the United States of America'' has the meaning assigned to it by the Convention set out in *Schedule 25,* and a company shall be regarded as being a resident of a territory, other than the United States of America, if it is so regarded under arrangements made with the government of that territory and having the force of law by virtue of *section 826*.

(3) Notwithstanding *section 243*—

(*a*) no deduction shall be allowed from that part of a company's profits which consists of petroleum profits in respect of—

(i) a charge on income paid by the company to a connected person, or

(ii) any other charge on income paid by the company unless it is a payment made wholly and exclusively for the purposes of a petroleum or mining trade carried on by the company,

and

(*b*) no deduction shall be allowed from that part of a company's profits which consists of profits other than petroleum profits in respect of any charge on income paid by the company which is a payment made wholly and exclusively

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for the purposes of a petroleum trade carried on by the company.

(4) In applying *section 237* to any annual payment made by a person whose profits or gains for the purposes of income tax arise wholly or partly from petroleum activities—

(*a*) the profits or gains arising from those activities shall not be treated as profits or gains which have been brought into charge to income tax—

(i) where the annual payment is made to a connected person, or

(ii) unless (but subject to *subparagraph (i)*) the payment is made wholly and exclusively for the purposes of a petroleum or mining trade carried on by the person making the payment,

and

(*b*) profits or gains, other than profits or gains arising from petroleum activities, shall not be treated as profits or gains which have been brought into charge to income tax where the annual payment is made wholly and exclusively for the purposes of a petroleum trade carried on by the person making the payment.

(5) Relief shall not be allowed—

(*a*) under *section 396(7)* in respect of a payment to which *subsection (3)(a)(i)* applies, or

(*b*) under *section 390* in respect of a payment to which *subsection (4)(a)(i)* applies,

where the payment is made wholly and exclusively for the purposes of a petroleum trade.

(6) In any case where for an accounting period of a company charges on income paid by the company are allowable under *section 243*—

(*a*) such amount of those charges as, by virtue of *subsection (3)*—

(i) is not allowable against a part of the company's profits, but

(ii) is allowable against the remaining part (in this subsection referred to as ''other profits'') of its profits,

exceeds the other profits, and

(*b*) the amount of that excess is greater than the amount, if any, by which the total of the charges on income which, subject to *subsection (3)*, are allowable to the company under *section 243* exceeds the total of the company's profits,

then, for the purpose of enabling the company to surrender the excess referred to in *paragraph (a)* by means of group relief, *section 420(6)* shall apply as if—

(I) the reference in that section to the amount paid by the surrendering company by means of charges on income were a reference to so much of that amount as by virtue of *subsection (3)* is allowable only against the company's other profits, and

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(II) the reference in that section to the surrendering company's profits were a reference to its other profits only.

Restriction of set-off of advance corporation tax.

[FA92 s82]

691.—(1) *Section 160* shall apply subject to *subsection (2)*.

(2) Where advance corporation tax is paid by a company (in this subsection referred to as ''the distributing company'') in respect of a distribution made by it to an associated company resident in the State—

(*a*) that advance corporation tax shall not be set against the distributing company's liability to corporation tax on any income included in its petroleum profits, and

(*b*) if the benefit of any amount of that advance corporation tax is surrendered under *section 166* by the distributing company to another company, the corresponding amount of advance corporation tax which under that section that other company is treated for the purposes of *section 160* as having paid shall not be set against that other company's liability to corporation tax on any income included in its petroleum profits.

(3) This section shall not apply as respects any distribution made before the 24th day of April, 1992.

Development expenditure: allowances and charges.

[FA92 s83; FA96 s132(1) and Sch5 PtI par18]

692.—(1) Subject to *subsection (4)*, the provisions of the Tax Acts relating to allowances and charges in respect of capital expenditure shall apply in relation to a petroleum trade as if each reference in those provisions to machinery or plant included a reference to assets, not being machinery or plant, representing development expenditure.

(2) In relation to assets representing development expenditure, *section 284(2)* shall, subject to *subsection (3)*, apply as if the reference in *paragraph (a)(i)* of that section to 15 per cent were a reference to 100 per cent.

(3) Assets representing development expenditure shall not be treated for the purposes of *section 284(1)* as being in use for the purposes of a petroleum trade at the end of any chargeable period or its basis period which ends before the commencement of production of petroleum in commercial quantities from the relevant field in connection with which the assets were provided.

(4) The following provisions shall not apply as respects development expenditure—

(*a*) *Chapters 1* and *3* of *Part 9*,

(*b*) *section 283*,

(*c*) *section 670*,

(*d*) *Chapter 1* of *Part 29*,

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(*e*) *sections 763* to *765*, and

(*f*) *section 768*.

(5) (*a*) For the purposes of this section, assets representing development expenditure shall be deemed to include assets (in this subsection referred to as ''leased assets'') provided for leasing to a person carrying on a petroleum trade where such leased assets would, if they had been provided by that person, be assets representing development expenditure, and where this paragraph applies—

(i) *section 284* shall apply as if the trade for the purposes of which the leased assets are (or would under *section 298(1)* be regarded as being) in use were a petroleum trade carried on by the lessor, and

(ii) *section 403* shall apply as if each reference in that section to machinery or plant included a reference to assets, not being machinery or plant, representing development expenditure.

(*b*) For the purposes of *subsection (4)*, capital expenditure on the provision of leased assets shall be deemed to be development expenditure.

Exploration expenditure: allowances and charges.

[FA92 s84; FA97 s146(1) and Sch9 PtI par16(2)]

693.—(1) Subject to *subsections (5)* and *(16)*, where a person carrying on a petroleum trade has incurred any exploration expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) there shall be made to the person for the chargeable period related to the expenditure an allowance equal to the amount of the expenditure.

(2) (*a*) Subject to *paragraph (b)*, where a person carrying on a petroleum trade has incurred any exploration expenditure in respect of which an allowance has been made to the person under *subsection (1)* and disposes of assets representing any amount of that expenditure, a charge (in this section referred to as a ''balancing charge'') equal to the net amount or value of the consideration in money or money's worth received by the person on the disposal shall be made on the person for the chargeable period related to the disposal or, if the disposal occurs after the date on which the trade is permanently discontinued, for the chargeable period related to the discontinuance.

(*b*) The amount on which a balancing charge is made shall not exceed the amount of the allowance made to the person under *subsection (1)* in respect of the amount of exploration expenditure represented by the assets disposed of.

(3) Where any assets representing exploration expenditure are destroyed, those assets shall for the purposes of *subsection (2)* be treated as if they had been disposed of immediately before their destruction, and any sale, insurance, salvage or compensation moneys received in respect of the assets by the person carrying on the petroleum trade shall be treated as if those moneys were consideration received on that disposal.

(4) Where a person disposes of any assets representing exploration expenditure incurred by the person in connection with an area which at the time of the disposal is, or which subsequently becomes,

a relevant field (or part of such a field), the person who acquires the assets shall, if that person carries on a petroleum trade which consists of or includes the working of the relevant field (or, as the case may be, the part of the relevant field), be deemed for the purposes of this section to have incurred—

(*a*) on the day on which that person acquires the assets, or

(*b*) if later, on the day on which that person commences to work the area connected with the assets as a relevant field (or, as the case may be, as part of the relevant field),

an amount of exploration expenditure equal to the lesser of—

(i) the amount of the exploration expenditure represented by the assets, and

(ii) the amount or value of the consideration given by that person on the acquisition of the assets.

(5) (*a*) Any exploration expenditure incurred by a person before the person commences to carry on a petroleum trade shall be treated for the purposes of *subsection (1)* as if that expenditure had been incurred by that person on the first day on which that person carries on the petroleum trade.

(*b*) Notwithstanding *paragraph (a)*, no account shall be taken for the purposes of this subsection of expenditure incurred in connection with an area which is not a relevant field, or part of such a field, being worked in the course of carrying on the petroleum trade, if the expenditure was incurred more than 25 years before that first day.

(6) Where a person incurs exploration expenditure before commencing to carry on a petroleum trade and *subsection (5)* applies as respects that expenditure and, before the person commences to carry on that trade, the person disposes of assets representing any amount of that expenditure, the allowance to be made to the person under this section in respect of that expenditure shall be reduced by the net amount or value of any consideration in money or money's worth received by the person on that disposal.

(7) For the purposes of this section other than for the purposes of *subsections (4)* and *(5)(a)*, the day on which any expenditure is incurred shall be taken to be the day on which the sum in question becomes payable.

(8) Any allowance or balancing charge made to or on a person under this section shall be made to or on the person in taxing the person's petroleum trade but, subject to *subsection (4)*, such allowance shall not be made in respect of the same expenditure in taxing more than one such trade.

(9) *Section 304(4)* shall apply in relation to an allowance under this section as it applies in relation to an allowance to be made under *Part 9*.

(10) *Section 307(2)(a)* shall apply for the purposes of this section, and *subsections (2)* to *(7)* of *section 321* shall apply for the interpretation of this section.

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(11) *Subsections (2)* and *(3)* of *section 306* shall apply in determining the chargeable period (being a year of assessment) for which an allowance or a balancing charge is to be made under this section.

(12) References to capital expenditure in *Part 9* and in *section 670*, *Chapter 1* of *Part 29* and *sections 763* to *765* shall be deemed not to include references to expenditure which is exploration expenditure, and exploration expenditure shall be deemed not to be expenditure on know-how for the purposes of *section 768*.

(13) Notwithstanding *subsection (12)*, the following provisions—

(*a*) *section 312*,

(*b*) *subsections (1)* and *(2)* of *section 316*,

(*c*) *section 317(2)*,

(*d*) *section 318*, and

(*e*) *subsections (4)* and *(5)* of *section 320*,

shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of *Part 9* and *Chapter 1* of *Part 29*.

(14) *Part 19* shall apply as if—

(*a*) the reference in *section 551(3)* to a balancing charge included a reference to a balancing charge under this section, and

(*b*) references in *section 555* to a capital allowance (or capital allowances) and to a balancing charge included references respectively to an allowance (or allowances) and a balancing charge under this section.

(15) *Section 319* shall apply as if *subsections (1)* and *(2)* of that section included references to this section.

(16) For the purposes of this section, a person shall be deemed not to be carrying on a petroleum trade unless and until the person is carrying on in the course of that trade trading activities which are petroleum extraction activities.

(17) Any reference in this section to assets representing any exploration expenditure shall be construed as including a reference to a part of or share in any such assets, and any reference in this section to a disposal or acquisition of any such assets shall be construed as including a reference to a disposal or acquisition of a part of or share in any such assets.

Exploration expenditure incurred by certain companies.

[FA92 s85]

694.—(1) For the purposes of *section 693*, where exploration expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) is incurred by a company (in this section referred to as an ''exploration company'') and—

(*a*) another company is a wholly-owned subsidiary of the exploration company, or

(*b*) the exploration company is at the time the exploration expenditure is incurred a wholly-owned subsidiary of

another company (in this section referred to as ''the parent company''), Pt.24 S.694

then, the expenditure or so much of it as the exploration company specifies—

(i) in the case referred to in *paragraph (a)*, may at the election of the exploration company be deemed to have been incurred by such other company (being a wholly-owned subsidiary of the exploration company) as the exploration company specifies, and

(ii) in the case referred to in *paragraph (b)*, may at the election of the exploration company be deemed to have been incurred by the parent company or by such other company (being a wholly-owned subsidiary of the parent company) as the exploration company specifies.

(2) Where under *subsection (1)* exploration expenditure incurred by an exploration company is deemed to have been incurred by another company (in this subsection referred to as ''the other company'')—

(*a*) the expenditure shall be deemed to have been incurred by the other company at the time at which the expenditure was actually incurred by the exploration company,

(*b*) in a case where the expenditure was incurred at a time before the incorporation of the other company, that company shall be deemed to have been in existence at the time the expenditure was incurred, and

(*c*) in the application of *section 693* to a petroleum trade carried on by the other company, the expenditure shall be deemed—

(i) to have been incurred by the other company for the purposes of that trade, and

(ii) not to have been met directly or indirectly by the exploration company.

(3) The same expenditure shall not be taken into account in relation to more than one trade by virtue of this section.

(4) A deduction or allowance shall not be made in respect of the same expenditure both by virtue of this section and under some other provision of the Tax Acts.

(5) A company shall for the purposes of *subsection (1)* be deemed to be a wholly-owned subsidiary of another company if and so long as all of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies, and *paragraph 6* of *Schedule 9* shall apply for the purposes of supplementing this subsection as if the reference in that paragraph to that Schedule were a reference to this subsection.

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Abandonment expenditure: allowances and loss relief.

[FA92 s86]

695.—(1) In this section, ''abandonment losses'' means so much of a loss in a petroleum trade incurred by a person in a chargeable period as does not exceed the total amount of allowances which—

(*a*) are to be made to the person for that chargeable period under this section, and

(*b*) have been taken into account in determining the amount of that loss in the petroleum trade.

(2) Subject to *subsections (5)* to *(9)*, where in a chargeable period a person, who is or has been carrying on in relation to a relevant field or a part of it petroleum extraction activities other than effecting the initial treatment and storage of petroleum that is won from the relevant field, incurs abandonment expenditure (not being expenditure which has been or is to be met directly or indirectly by any other person) in relation to the field or the part of it, as the case may be, there shall be made to the person for the chargeable period an allowance equal to the amount of the expenditure.

(3) (*a*) Subject to *paragraph (b)*, as respects so much of a loss in a petroleum trade incurred by a person in a chargeable period as is an abandonment loss, the person shall be entitled on making a claim in that behalf to such repayment of income tax as is necessary to secure that the aggregate amount of income tax for the chargeable period and the 3 chargeable periods immediately preceding it will not exceed the amount which would have been borne by the person if the person's income arising from petroleum activities for each of those chargeable periods had been reduced by the lesser of—

(i) the abandonment loss, and

(ii) so much of the abandonment loss as could not on that claim be treated as reducing such income of a later chargeable period.

(*b*) Relief under *paragraph (a)* in respect of a loss shall be deemed for the purposes of the Tax Acts to be relief given under *section 381(1)* such that—

(i) no further relief shall be given under *section 381(1)* in respect of so much of an abandonment loss as is an amount in respect of which relief has been given under *paragraph (a)*, and

(ii) *subsections (3)* to *(7)* of *section 381* and *section 392* shall apply to relief under *paragraph (a)* as they apply to relief under *section 381*.

(*c*) As respects so much of a loss in a petroleum trade incurred by a person in a chargeable period as is an abandonment loss, *subsections (2)* and *(3)* of *section 396* shall apply as if the time specified in *subsection (3)* of that section were a period of 3 years ending immediately before the chargeable period in which the loss is incurred.

(4) So much of the abandonment losses, if any, incurred by a person on or before the day on which the person permanently discontinues to carry on a petroleum trade (in this subsection referred to as ''the first-mentioned trade'') as would not apart from this subsection be allowed against or treated as reducing the person's or any

other person's income or profits, shall be treated as incurred by the person in the first chargeable period of the first petroleum trade (in this section referred to as ''the new trade'') to be carried on by the person after the permanent discontinuance of the first-mentioned trade as a trading expense of the new trade.

(5) Where a petroleum trade carried on by a person has been permanently discontinued, any abandonment expenditure incurred by the person after the discontinuance shall be treated for the purposes of *subsection (2)* as if that expenditure had been incurred by the person on the last day on which the person carries on the petroleum trade.

(6) For the purposes of this section other than *subsections (4)* and *(5)*, the day on which any expenditure is incurred shall be taken to be the day on which the sum in question becomes payable.

(7) Any allowance made to a person under this section shall be made in taxing the person's petroleum trade, but such allowance shall not be made in respect of the same expenditure in taxing more than one trade.

(8) References to capital expenditure in *Part 9* and in *section 670*, *Chapter 1* of *Part 29* and *sections 763* to *765* shall be deemed not to include references to expenditure which is abandonment expenditure; but *subsections (1)* and *(2)* of *section 316* and *sections 317(2)* and *320(5)* shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of *Part 9* and *Chapter 1* of *Part 29*.

(9) *Subsections (9)* to *(11)* and *(15)* of *section 693* shall apply for the purposes of this section as they apply for the purposes of that section.

Valuation of petroleum in certain circumstances.

[FA92 s87]

696.—(1) Where a person disposes, otherwise than by means of a sale at arm's length, of petroleum acquired by the person by virtue of petroleum activities carried on by the person, then, for the purposes of the Tax Acts the disposal of the petroleum and its acquisition by the person to whom the disposal was made shall be treated as having been for a consideration equal to the market value of the petroleum at the time the disposal was made.

(2) (*a*) In this subsection, ''relevant appropriation'', in relation to any petroleum won or otherwise acquired in the course of the carrying on by a person of petroleum activities, means the appropriation of that petroleum to refining or to any use except use for petroleum extraction activities carried on by the person, and ''relevantly appropriated'' shall be construed accordingly.

(*b*) Where a person who carries on in the course of a trade petroleum activities and other activities makes a relevant appropriation of any petroleum won or otherwise acquired by the person in the course of the petroleum activities without disposing of the petroleum, then, for the purposes of the Tax Acts the person shall be treated as having at the time of the appropriation—

(i) sold the petroleum in the course of the petroleum trade carried on by the person, and

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(ii) bought the petroleum in the course of a separate trade consisting of the activities other than the petroleum activities,

and as having so sold and bought the petroleum at a price equal to its market value at the time the petroleum was relevantly appropriated.

(3) For the purposes of this section, the market value at any time of any petroleum shall be the price which that petroleum might reasonably be expected to fetch on a sale of that petroleum at that time if the parties to the transaction were independent parties dealing at arm's length.

Treatment of certain disposals.

[FA92 s88]

697.—(1) In this section, ''relevant period'', as respects a disposal, means the period beginning 12 months before and ending 3 years after the disposal, or such longer period as the Minister for the Marine and Natural Resources may, on the application of the person making the disposal, certify to be in that Minister's opinion reasonable having regard to the proper exploration, delineation or development of any licensed area.

(2) This section shall apply where on or after the 14th day of January, 1985, a person, with the consent of the Minister for the Marine and Natural Resources, makes a disposal of an interest in a licensed area (including the part disposal of such an interest or the exchange of an interest owned by the person in one licensed area for an interest in another licensed area) and the disposal is shown to the satisfaction of that Minister to have been made for the sole purpose of ensuring the proper exploration, delineation or development of any licensed area.

(3) Where this section applies as respects a disposal by a person (neither being nor including an exchange referred to in *subsection (2)*) and the consideration received by the person is in the relevant period wholly and exclusively applied (whether by the person, or on that person's behalf by the person acquiring the asset disposed of) for the purposes of either or both of the following—

(*a*) petroleum exploration activities, and

(*b*) searching for or winning access to petroleum in a relevant field,

then, for the purposes of the Capital Gains Tax Acts, if the person making the disposal makes a claim in that behalf, the disposal shall not be treated as involving any disposal of an asset but the consideration shall not, as respects any subsequent disposal of any asset acquired or brought into being or enhanced in value by the application of that consideration, be deductible from the consideration for that subsequent disposal in the computation of the chargeable gain accruing on that disposal.

(4) (*a*) Where this section applies as respects an exchange referred to in *subsection (2)*, then, for the purposes of the Capital Gains Tax Acts, if the person making such an exchange makes a claim in that behalf, the exchange shall not be treated as involving any disposal or acquisition by that person of an asset, but the asset given by that person and the asset acquired by that person in the exchange shall be treated as the same asset acquired as the asset given by that person was acquired.

(*b*) Notwithstanding *paragraph (a)*— PT.24 S.697

(i) where the person receives for the exchange any consideration in addition to the interest in the other licensed area, this subsection shall not apply as respects the claim made by that person unless the additional consideration is applied in the relevant period in the manner referred to in *subsection (3)* but, where that additional consideration is so applied and the person makes a claim that this subsection should apply, it shall so apply as if the asset given by that person in exchange were such portion only of that asset as is equal in value to the interest in the other licensed area taken by that person in the exchange, and *subsection (3)* shall apply as if the remaining portion of the asset so given by that person were disposed of by that person for that additional consideration, and

(ii) where the person gives for the exchange any consideration in addition to the interest in a licensed area given by that person in the exchange, this subsection shall apply as respects the claim made by that person as if the interest in the other licensed area taken by that person in the exchange were such portion only of that interest as is equal in value to the interest in the licensed area given by that person in the exchange.

PART 25

Industrial and Provident Societies, Building Societies, and Trustee Savings Banks

CHAPTER 1

Industrial and provident societies

Interpretation (*Chapter 1*).

698.—In this Chapter, except where the context otherwise requires—

[ITA67 s218; FA75 s33(2) and Sch1 PtII]

''loan interest'', in relation to a society, means any interest payable by the society in respect of any mortgage, loan, loan stock or deposit;

''share interest'', in relation to a society, means any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the amount of the shareholder's holding in the share capital of the society;

''society'' means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978;

references to the payment of share interest or loan interest include references to the crediting of such interest.

Deduction as expenses of certain sums, etc.

699.—(1) In computing for the purposes of Case I of Schedule D the profits or gains of a society, there shall be deducted as expenses any sums which—

[ITA67 s219(1) and (4)(b) and (c); FA74 s47; CTA76 s30(5)(a)]

(*a*) represent a discount, rebate, dividend or bonus granted by the society to members of the society or other persons in respect of amounts paid or payable by or to them on

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account of their transactions with the society, being transactions taken into account in that computation and calculated by reference to those amounts or to the magnitude of those transactions and not by reference to the amount of any share or interest in the capital of the society;

(*b*) are share interest or loan interest paid by the society, being interest wholly and exclusively laid out or expended for the purposes of the trade.

(2) (*a*) Where for the year 1962-63 or any previous year of assessment an annual allowance, balancing allowance or balancing charge in respect of capital expenditure on the construction of a building or structure might have been made to or on a society under Part V of the Finance Act, 1959, but for the circumstance that the society was exempt from tax under Schedule D, any writing down allowance, balancing allowance or balancing charge to be made in respect of the expenditure under *Part 9* for any chargeable period shall be computed as if every annual allowance, balancing allowance and balancing charge which might have been so made had been made; but nothing in this paragraph shall affect *section 274(8)*.

(*b*) Where for the year 1962-63 or any previous year of assessment an annual allowance in respect of capital expenditure on the purchase of patent rights might have been made to or on a society under Part V of the Finance Act, 1959, but for the circumstance that the society was exempt from tax under Schedule D, the amount of the expenditure remaining unallowed (within the meaning of *section 756*) shall, in relation to any balancing allowance or balancing charge under *Chapter 1* of *Part 29* to be made to or on the society in respect of the expenditure for any chargeable period, be computed as if every annual allowance which might have been so made had been made.

Special computational provisions.

[CTA76 s30(2) to (4); FA78 s19]

700.—(1) Notwithstanding anything in the Tax Acts, any share or loan interest paid by a society—

(*a*) shall be paid without deduction of income tax and shall be charged under Case III of Schedule D, and

(*b*) shall not be treated as a distribution;

but *paragraph (a)* shall not apply to any share interest or loan interest payable to a person whose usual place of abode is not in the State.

(2) In computing the corporation tax payable for any accounting period of a society, *section 243* shall apply subject to the deletion of ''yearly'' in *subsection (4)(a)* of that section.

(3) On or before the 1st day of May in each year, every society shall deliver to the inspector a return in such form as the Revenue Commissioners may prescribe specifying—

(*a*) the name and place of residence of every person to whom share interest or loan interest amounting to the sum of £70 or more has been paid by the society in the year of assessment which ended before that date, and

(*b*) the amount of such share interest or loan interest paid in that year to each of those persons, Pt.25 S.700

and, if such a return is not fully made as respects any year of assessment, the society shall not be entitled to any deduction under *section 97(2)(e)*, *243* or *699(1)* in respect of any payments of share interest or loan interest which it was required to include in the return, and all such assessments and additional assessments shall be made as may be necessary to give effect to this subsection.

Transfer of shares held by certain societies to members of society.

[FA93 s 35(1)(a) and (2) to (6); FA97 s146(1) and Sch9 PtI par17(2)]

701.—(1) In this section—

''company'' has the meaning assigned to it by *section 5(1)*;

''consideration'' means consideration in money or money's worth;

''control'', in relation to a company, shall be construed in accordance with *section 432*;

''society'' means a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, which is an agricultural society or a fishery society within the meaning of *section 443(16)*.

(2) (*a*) In this subsection and in *subsection (4)*, ''the appropriate number'', in relation to a member's original shares, means such portion (or as near as may be to such portion) of the total number of the referable shares owned by the member at the time of the transfer as bears to that number the same proportion as the total number of shares in the company which are subject to the transfer bears to the total number of shares in the company owned by the society immediately before the transfer, and the number of the referable shares owned by a member shall be an amount determined by the formula—

$$\frac{A \times B}{C} \times \frac{D}{B}$$

where—

A is the market value of the shares in the company owned by the society immediately before the transfer,

B is the total number of the shares in the society in issue immediately before the transfer,

C is the market value of the total assets (including the shares in the company) of the society immediately before the transfer, and

D is the number of shares in the society owned by the member immediately before the transfer.

(*b*) Where on or after the 6th day of April, 1993, a society, being a society which at any time on or after that date controls or has had control of a company, transfers to the members of the society shares owned by it in the company (in this section referred to as ''the transfer'') and—

(i) the transfer, in so far as it relates to any member, is in respect of and in proportion to, or as nearly as may be in proportion to, that member's holding of shares (in this section referred to as ''the original shares'') in the society immediately before the transfer,

(ii) no consideration (apart from the consideration given by the members represented by the cancellation of the original shares referred to in *subparagraph (iii)*) for, or in connection with, the transfer is given to or received from any member (or any person connected with that member) by the society (or any person connected with the society), and

(iii) on the transfer or as soon as possible after the transfer, the original shares (or the appropriate number of those shares) of each member are cancelled without any consideration (apart from the consideration given to the members represented by the transfer to the members of the shares in the company) for or in connection with such cancellation being given to or received from any member (or any person connected with that member) by the society (or any person connected with the society) and, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, any cancellation of such shares shall involve those issued earlier rather than those issued later,

then, subject to *subsection (5)*, *subsections (3)* and *(4)* shall apply.

(3) For the purposes of the Corporation Tax Acts, the transfer shall be treated as—

(*a*) not being a distribution within the meaning of *Part 6*, and

(*b*) being for a consideration of such amount as would secure that, for the purposes of charging the gain on the disposal by the society of the shares owned by it in the company, neither a gain nor a loss would accrue to the society.

(4) For the purposes of the Capital Gains Tax Acts—

(*a*) the cancellation of the original shares (or the appropriate number of those shares) shall not be treated as involving any disposal of those shares, and

(*b*) each member shall be treated as if the shares transferred to that member in the course of the transfer were acquired by that member at the same time and for the same consideration at which the original shares (or the appropriate number of those shares) were acquired by that member and, for the purposes of giving effect to this paragraph, where the original shares (or the appropriate number of those shares) have been issued to a member at different times, there shall be made all such apportionments as are in the circumstances just and reasonable.

(5) This section shall not apply unless it is shown that the transfer is effected for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose or one of the main purposes is avoidance of liability to corporation tax or capital gains tax.

(6) In a case where this section applies, the society concerned shall include in the return required to be made by it under *section 884* a statement of the total number of shares cancelled in accordance with *subsection (2)(b)(iii)*. PT.25 S.701

CHAPTER 2

Building societies

Union or amalgamation of, transfer of engagement between, societies.

[CTA76 s31(5) and (8)]

702.—(1) In this section, ''building society'' means a building society within the meaning of the Building Societies Acts, 1874 to 1989.

(2) Where in the course of or as part of a union or amalgamation of 2 or more building societies or a transfer of engagements from one building society to another building society there is a disposal of an asset by one society to another society, both societies shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the society making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the society making the disposal.

Change of status of society.

[FA90 s57]

703.—(1) In this section and in *Schedule 16*—

''building society'' means a building society incorporated or deemed by section 124(2) of the Building Societies Act, 1989, to be incorporated under that Act, and references to ''society'' shall be construed accordingly;

''successor company'' means a successor company within the meaning of Part XI of the Building Societies Act, 1989.

(2) *Schedule 16* shall apply where a society converts into a successor company in accordance with Part XI of the Building Societies Act, 1989.

CHAPTER 3

Trustee savings banks

Amalgamation of trustee savings banks.

[FA90 s59]

704.—(1) In this Chapter and in *Schedule 17*, ''trustee savings bank'' has the same meaning as in the Trustee Savings Banks Act, 1989.

(2) Where any assets or liabilities of a trustee savings bank are transferred or deemed to be transferred to another trustee savings bank in accordance with Part IV of the Trustee Savings Banks Act, 1989, those banks shall be treated for the purposes of the Tax Acts and the Capital Gains Tax Acts as if they were the same person.

Reorganisation of trustee savings banks into companies.

[FA90 s60]

705.—*Schedule 17* shall apply to the reorganisation in accordance with section 57 of the Trustee Savings Banks Act, 1989, of—

(*a*) one or more trustee savings banks into a company, or

(*b*) a company referred to in subparagraph (i) of subsection (3)(*c*) of that section into a company referred to in subparagraph (ii) of that subsection.

PART 26

LIFE ASSURANCE COMPANIES

CHAPTER 1

General provisions

Interpretation and general (*Part 26*).

[CTA76 s36A(7) and s50(2) to (4); FA79 s28(5); FA86 s59(d); FA93 s11(f) and (k); FA96 s132(1) and Sch5 PtI par10(2) and (3)]

706.—(1) In this Part, unless the context otherwise requires—

''actuary'' has the same meaning as in section 3 of the Insurance Act, 1936;

''annuity business'' means the business of granting annuities on human life;

''annuity fund'' means, where an annuity fund is not kept separately from the life assurance fund of an assurance company, such part of the life assurance fund as represents the liability of the company under its annuity contracts, as stated in its periodical returns;

''assurance company'' has the same meaning as in section 3 of the Insurance Act, 1936;

''excluded annuity business'', in relation to an assurance company, means annuity business which—

(*a*) is not pension business, or the liability of the company in respect of which is not taken into account in determining the foreign life assurance fund (within the meaning of *section 718(1)*) of the company, and

(*b*) arises out of a contract for the granting of an annuity on human life, being a contract effected, extended or varied on or after the 6th day of May, 1986, and which fails to satisfy any one or more of the following conditions—

(i) that the annuity shall be payable (whether or not its commencement is deferred for any period) until the end of a human life or for a period ascertainable only by reference to the end of a human life (whether or not continuing after the end of a human life),

(ii) that the amount of the annuity shall be reduced only on the death of a person who is an annuitant under the contract or by reference to a bona fide index of prices or investment values, and

(iii) that the policy document evidencing the contract shall expressly and irrevocably prohibit the company from agreeing to commutation in whole or in part of any annuity arising under the contract;

''general annuity business'' means any annuity business which is not—

(*a*) excluded annuity business, or

(*b*) pension business,

and ''pension business'' shall be construed in accordance with *subsections (2)* and *(3)*;

''life business'' includes ''life assurance business'' and ''industrial assurance business'', which have the same meanings respectively as in section 3 of the Insurance Act, 1936, and where a company carries on both businesses may mean either;

''life assurance fund'' and ''industrial assurance fund'' have the same meanings respectively as in the Insurance Acts, 1909 to 1969, and ''life assurance fund'', in relation to industrial assurance business, means the industrial assurance fund;

''market value''' shall be construed in accordance with *section 548*;

''overseas life assurance company'' means an assurance company having its head office outside the State but carrying on life assurance business through a branch or agency in the State;

''pension fund'' and ''general annuity fund'' shall be construed in accordance with *subsection (2)*;

''periodical return'', in relation to an assurance company, means a return deposited with the Minister for Enterprise, Trade and Employment under the Assurance Companies Act, 1909, and the Insurance Act, 1936;

''policy'' and ''premium'' have the same meanings respectively as in section 3 of the Insurance Act, 1936;

''special investment business'', ''special investment fund'' and ''special investment policy'' have the meanings respectively assigned to them by *section 723*;

''valuation period'' means the period in respect of which an actuarial report is made under section 5 of the Assurance Companies Act, 1909, as extended by section 55 of the Insurance Act, 1936.

(2) Any division to be made between general annuity business, pension business and other life assurance business shall be made on the principle of—

(*a*) referring to pension business any premiums within *subsection (3)*, together with the incomings, outgoings and liabilities referable to those premiums, and the policies and contracts under which they are or have been paid, and

(*b*) allocating to general annuity business all other annuity business except excluded annuity business,

and references to ''pension fund'' and ''general annuity fund'' shall be construed accordingly, whether or not such funds are kept separately from the assurance company's life assurance fund.

(3) The premiums to be referred to pension business shall be those payable under contracts which are (at the time when the premium is payable) within one or other of the following descriptions—

(*a*) any contract with an individual who is, or but for an insufficiency of profits or gains would be, chargeable to income tax in respect of relevant earnings (within the meaning of *section 783*) from a trade, profession, office or employment carried on or held by him or her, being a contract approved by the Revenue Commissioners under *section 784* or *785* or any contract under which there is

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payable an annuity in relation to which *section 786(3)* applies;

(*b*) any contract (including a contract of assurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme (within the meaning of *Chapter 1* of *Part 30*), being a contract so framed that the liabilities undertaken by the assurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

(*c*) any contract with the trustees or other persons having the management of a scheme approved under *section 784* or *785* or under both of those sections, being a contract which—

(i) was entered into for the purposes only of that scheme, and

(ii) in the case of a contract entered into or varied on or after the 6th day of April, 1958, is so framed that the liabilities undertaken by the assurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

and, in this subsection and in *subsection (2)*, ''premium'' includes any consideration for an annuity.

(4) (*a*) In this subsection, ''deduction'' means any deduction, relief or set-off which may be treated for the purposes of corporation tax as reducing profits of more than one description.

(*b*) For the purposes of the Corporation Tax Acts, any deduction from the profits of an assurance company, being profits of more than one class of life assurance business referred to in *section 707(2)*, shall be treated as reducing the amount of the profits of each such class of business by an amount which bears the same proportion to the amount of the deduction as the amount of the profits of that class of business, before any deduction, bears to the amount of the profits of the company brought into charge to corporation tax.

Management expenses.

[CTA76 s33(1) to (2); FA86 s59(a); FA92 s44(a); FA93 s11(a) and (b)]

707.—(1) Subject to *sections 709* and *710*, *section 83* shall apply for computing the profits of a company carrying on life business, whether mutual or proprietary (and not charged to corporation tax in respect of it under Case I of Schedule D), whether or not the company is resident in the State, as that section applies in relation to an investment company, except that—

(*a*) there shall be deducted from the amount treated as expenses of management for any accounting period—

(i) any repayment or refund receivable in the period of the whole or part of a sum disbursed by the company for that period or any earlier period as expenses of management, including commissions (in whatever manner described),

(ii) reinsurance commissions earned by the company in the period, and

(iii) the amount of any fines or fees receivable in the period or profits arising from reversions in the period,

and in calculating profits arising from reversions the company may set off against those profits any losses arising from reversions in any previous accounting period during which any enactment granting this relief was in operation in so far as they have not already been so set off, and

(*b*) no deduction shall be made under *section 83(2)(b)*.

(2) (*a*) Where the life assurance business of an assurance company includes more than one of the following classes of business—

(i) pension business,

(ii) general annuity business,

(iii) special investment business, and

(iv) life assurance business (excluding such pension business, general annuity business and special investment business),

then, for the purposes of the Corporation Tax Acts, the business of each such class shall be treated as though it were a separate business, and *subsection (1)* shall apply separately to each such class of business as if it were the only business of the company.

(*b*) Any amount of an excess referred to in *section 83(3)* which is carried forward from an accounting period ending before the 27th day of May, 1986, may for the purposes of *section 83(2)* be deducted in computing the profits of the company for a later accounting period in respect of such of the classes of business referred to in *paragraph (a)* as the company may elect; but any amount so deducted in computing the profits from one of those classes of business shall not be deducted in computing the profits of the company from another of those classes of business.

(3) Relief under *subsection (1)* shall not be given for any amount of stamp duty (except any part of such amount as is referable to pension business) charged under subsection (8)(*c*) of section 92 of the Finance Act, 1982, on any statement delivered by a company in accordance with subsection (8)(*b*) of that section in respect of any quarter commencing after the 27th day of May, 1986.

(4) Relief under *subsection (1)* shall not be given to any such company in so far as it would, if given in addition to all other reliefs to which the company is entitled, reduce the corporation tax borne by the company on the income and gains of its life business for any accounting period to less than would have been paid if the company had been charged to tax at the rate specified in *section 21(1)* in respect of that business under Case I of Schedule D and, where relief has been withheld in respect of any accounting period by virtue of this subsection, the excess to be carried forward by virtue of *section 83(3)* shall be increased accordingly.

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(5) (*a*) For the purposes of *subsection (4)*—

(i) any tax credit to which the company is entitled in respect of a distribution received by it shall be treated as an equivalent amount of corporation tax borne or paid in respect of that distribution,

(ii) any payment in respect of that credit under *section 83(5)*, *136(3)*, *157*, *158* or *712(2)* shall be treated as reducing the tax so treated as borne or paid,

(iii) relief for the management expenses, if any, attributable to the life business, other than special investment business, of a company shall be withheld before any relief for management expenses attributable to the special investment business of the company is withheld, and

(iv) *sections 709(2)*, *710* and *714* shall, and *section 396(5)(b)* shall not, apply for the purposes of computing the profits of the life assurance business or the industrial assurance business, as the case may be, which would have been charged to tax under Case I of Schedule D.

(*b*) The reference in *section 551(2)* to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of *subsection (4)*.

Acquisition expenses.

[CTA76 s33A(1) to (5) and (7) to (8); FA92 s44(c); FA93 s23; FA96 s46; FA97 s156(3)]

708.—(1) For the purposes of this section and subject to *subsections (2)* to *(4)*, the acquisition expenses for any period of an assurance company carrying on life assurance business shall be such of the following expenses of management, including commissions (in whatever manner described) and excluding any payment of rent in respect of which a deduction is to be made twice by virtue of *section 324*, *333* or *345* in the computation of profits or gains, as are for that period attributable to the company's life assurance business (excluding pension business and general annuity business)—

(*a*) expenses of management which are disbursed solely for the purpose of the acquisition of business, and

(*b*) so much of any other expenses of management which are disbursed partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,

reduced by—

(i) any repayment or refund receivable in the period of the whole or part of management expenses within *paragraph (a)* or *(b)* and disbursed by the company for that period or any earlier period, and

(ii) reinsurance commission earned by the company in that period which is referable to life assurance business (excluding pension business and general annuity business).

(2) *Subsection (1)* shall not apply to acquisition expenses in respect of policies of life assurance issued before the 1st day of April,

1992, but without prejudice to the application of that subsection to any commission (in whatever manner described) attributable to a variation on or after that date in a policy of life assurance issued before that date, and for this purpose the exercise of any rights conferred by a policy shall be regarded as a variation of the policy. Pt.26 S.708

(3) In *subsection (1)*, ''the acquisition of business'' includes the securing on or after the 1st day of April, 1992, of the payment of increased or additional premiums in respect of a policy of assurance which has already been issued before, on or after that date.

(4) For the purposes of *subsection (1)* and in relation to any period, the expenses of management attributable to a company's life assurance business (excluding pension business and general annuity business) shall be expenses—

(*a*) which are disbursed for that period (disregarding any treated as so disbursed by *section 83(3)*), and

(*b*) which, disregarding *subsection (5)*, are deductible as expenses of management of such life assurance business in accordance with *section 707*.

(5) Notwithstanding anything in *section 707*, only one-seventh of the acquisition expenses for any accounting period (in this section referred to as ''the base period'') shall be treated as deductible under that section for the base period, and in *subsections (6)* and *(7)* any reference to the full amount of the acquisition expenses for the base period is a reference to the amount of those expenses which would be deductible for that period apart from this subsection.

(6) Where by virtue of *subsection (5)* only a fraction of the full amount of the acquisition expenses for the base period is deductible under *section 707* for that period, then, subject to *subsection (7)*, a further one-seventh of the full amount shall be so deductible for each succeeding accounting period after the base period until the whole of the full amount has become so deductible, except that for any accounting period of less than a year the fraction of one-seventh shall be proportionately reduced.

(7) For any accounting period for which the fraction of the full amount of the acquisition expenses for the base period which would otherwise be deductible in accordance with *subsection (6)* exceeds the balance of those expenses which has not become deductible for earlier accounting periods, only that balance shall be deductible.

709.—(1) Where an assurance company carries on life business in conjunction with insurance business of any other class, the life business shall for the purposes of corporation tax be treated as a separate business from any other class of business carried on by the company. Companies carrying on life business. [CTA76 s34]

(2) In ascertaining for the purposes of *section 396* or *397* whether and to what extent a company has incurred a loss on its life business, any profits derived from the investments of its life assurance fund (including franked investment income of a company resident in the State) shall be treated as part of the profits of that business.

Pt.26
Profits of life business.

[CTA76 s35; FA91 s30; FA94 s60; FA97 s67]

710.—(1) Where the profits of an assurance company in respect of its life business are for the purposes of the Corporation Tax Acts computed in accordance with the provisions applicable to Case I of Schedule D, the following provisions shall apply:

(*a*) such part of those profits as belongs or is allocated to, or is expended on behalf of, policyholders or annuitants shall be excluded in making the computation;

(*b*) such part of those profits as is reserved for policyholders or annuitants shall also be excluded in making the computation but, if any profits so excluded as being so reserved cease at any time to be so reserved and are not allocated to, or expended on behalf of, policyholders or annuitants, those profits shall be treated as profits of the company for the accounting period in which they ceased to be so reserved.

(2) (*a*) Subject to *paragraph (b)*, where a company's trading operations consist solely of a foreign life assurance business (within the meaning of *section 451(1)*) the following provisions shall apply:

(i) subject to this subsection, the company shall be chargeable to corporation tax in respect of the profits of that business under Case I of Schedule D;

(ii) notwithstanding *subsection (1)(b)*, where apart from this subparagraph any part of those profits would be excluded in computing the income chargeable under Case I of Schedule D solely by virtue of that part being reserved for policyholders or annuitants, that part shall not be excluded in computing the income so chargeable;

(iii) the charge to corporation tax under Schedule D of income from investments (in this subsection referred to as ''shareholders' investments'') which are not investments of any fund representing the amount of the liability of the company in respect of its business with policyholders and annuitants shall not be under Case I of that Schedule;

(iv) notwithstanding *section 707*, *section 83* shall apply for computing the profits of the company as respects expenses of management, including commissions, to the extent that those expenses—

(I) are disbursed for the purposes of managing shareholders' investments, and

(II) would not apart from this subparagraph be deductible in computing the profits, or any description of profits, of the company for the purposes of corporation tax.

(*b*) In applying the definition of ''foreign life assurance business'' in *section 451(1)* for the purposes of *paragraph (a)*, *section 446* shall apply as if there were deleted from *subsection (2)* of that section '', and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005''.

(3) (*a*) In this subsection— PT.26 S.710

''policy of assurance'' means—

(i) a policy of assurance issued by a company (to which *subsection (2)* applies) to an individual who on the date the policy is issued resides outside the State and who continuously so resides throughout a period of not less than 6 months commencing on that date, or

(ii) a policy issued or a contract made which is not a retirement benefits policy solely by virtue of the age condition not being complied with;

''relevant amount''—

(i) in relation to a policy of assurance, means the amount determined by the formula—

$$V - P$$

and

(ii) in relation to a retirement benefits policy, means the amount determined by the formula—

$$(V - P) \times \frac{75}{100}$$

where—

V is the amount or the aggregate of amounts by which the market value of all the entitlements under the policy of assurance or the retirement benefits policy, as the case may be, increased during any period or periods in which the policyholder was residing in the State, and

P is the amount of premiums or like sums paid in respect of the policy of assurance or the retirement benefits policy, as the case may be, during any period or periods in which the policyholder was residing in the State;

''retirement benefits policy'' means a policy issued or a contract made by a company (to which *subsection (2)* applies)—

(i) to or with, as the case may be, an individual who, on the date the policy is issued or the contract is made, resides outside the State and who continuously so resides throughout a period of not less than 6 months commencing on that date, and

(ii) on terms which include the condition (in this subsection referred to as ''the age condition'') that the main benefit secured by the policy or contract is the payment by the company (otherwise than on the death or disability of the individual) of a sum to the individual on or after the individual attains the age of 60 years and before the individual attains the age of 70 years and that condition is complied with.

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(*b*) Where, in respect of a policy of assurance or a retirement benefits policy, a sum is payable by a company (otherwise than by reason of death or disability of the policyholder) to a policyholder who is resident or ordinarily resident in the State (within the meaning of *Part 34*), then—

(i) the company shall be deemed for the purposes of the Corporation Tax Acts to have made, in the year of assessment in which the sum is payable, an annual payment of an amount equal to the relevant amount in relation to the policy of assurance or the retirement benefits policy, as the case may be, and *section 239* shall apply for the purposes of the charge, assessment and recovery of such tax,

(ii) the company shall be entitled to deduct the tax out of the sum otherwise payable,

(iii) the recipient of the sum payable shall not be entitled to repayment of, or credit for, such tax so deducted, and

(iv) the sum paid, or any part of the sum paid, shall not be reckoned in computing total income of the recipient of the sum paid for the purposes of the Income Tax Acts.

(4) Where an assurance company carries on both life assurance business and industrial assurance business, the business of each such class shall for the purposes of the Corporation Tax Acts be treated as though it were a separate business, and *section 707* shall apply separately to each such class of business.

(5) (*a*) Where under section 25(1) of the Insurance Act, 1989, an assurance company amalgamates its industrial assurance and life assurance funds, *subsection (4)* shall not apply to that company for any accounting period ending on or after the completion of the amalgamation and before the recommencement, if any, of a separate industrial assurance or life assurance fund.

(*b*) For the purposes of applying *section 707*, in so far as it is affected by—

(i) management expenses or charges on income which apart from *section 83(3)* would be treated as respectively incurred for or paid in an accounting period ending before the day on which the amalgamation is completed, or

(ii) any loss incurred in such a period,

to a company which has amalgamated its industrial assurance and life assurance funds, *subsection (4)* shall apply as if the company had not amalgamated its funds.

(6) For the purposes of *subsections (2)* and *(5)*, where an accounting period of an assurance company begins before the day (in this subsection referred to as ''the day of amalgamation'') on which the company completes the amalgamation of its industrial assurance and life assurance funds and ends on or after the day of amalgamation, that period shall be divided into one part beginning on the day on which the accounting period begins and ending on the day before

the day of amalgamation and another part beginning on the day of amalgamation and ending on the day on which the accounting period ends, and both parts of the accounting period shall be treated as if they were separate accounting periods. Pt.26 S.710

Chargeable gains of life business.

[CTA76 s35A; FA93 s11(d); FA96 s47(1)]

711.—(1) For the purpose of computing corporation tax on chargeable gains accruing to a fund or funds maintained by an assurance company in respect of its life business—

(*a*) (i) *section 556*, and

(ii) *section 607*,

shall not apply, and

(*b*) *section 581* shall, as respects—

(i) *subsections (1)* and *(2)* of that section, and

(ii) *subsection (3)* of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

apply as if *paragraph 24* of *Schedule 32*, *section 719*, *section 723(7)(a)* and *paragraph (a)(ii)* had not been enacted.

(2) (*a*) In this subsection—

"the appropriate amount in respect of the interest" means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if a company were the first buyer and carried on a trade to which *section 749(1)* applies but, in so determining the appropriate amount in respect of the interest in accordance with *Schedule 21*, *paragraph 3(4)* of that Schedule shall apply as if "in the opinion of the Appeal Commissioners" were deleted;

"securities" has the same meaning as in *section 815*.

(*b*) Where in an accounting period a company disposes of any securities and in the following accounting period interest becoming payable in respect of the securities is receivable by the company, the gain or loss accruing on the disposal shall be computed as if the price paid by the company for the securities was reduced by the appropriate amount in respect of the interest; but where for an accounting period this paragraph applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the immediately following accounting period from the disposal of the securities.

(3) Subject to *section 720*, where an assurance company, in the course of carrying on a class of life assurance business mentioned in *subparagraph (iii)* or *(iv)* of *section 707(2)(a)*, disposes of or is deemed to dispose of assets in an accounting period, the amount, if any, for each such class of business by which the aggregate of allowable losses exceeds the aggregate of chargeable gains on the disposals or deemed disposals in the course of that class of business in the accounting period shall be—

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(*a*) disregarded for the purposes of *section 31*, and

(*b*) treated for the purposes of the Corporation Tax Acts as a sum disbursed by the company in the accounting period as an expense of management, other than an acquisition expense (within the meaning of *section 708*), incurred in the course of carrying on that class of business.

(4) For the purposes of *subsection (3)*, any amount which apart from *paragraph 24* of *Schedule 32* would be treated as a chargeable gain or an allowable loss of an accounting period of a company by virtue of *section 720* shall also be treated as arising on a disposal of assets by the company in the accounting period so that each such amount shall be taken into account in determining the amount, if any, by which the aggregate of allowable losses exceeds the aggregate of chargeable gains on disposals of assets by the company in the course of carrying on life assurance business (excluding pension business, general annuity business and special investment business) in the accounting period.

Distributions received from Irish resident companies.

[CTA76 s33B; FA93 s11(c)]

712.—(1) *Sections 129* and *153(1)* shall not apply as respects a distribution received by an assurance company in connection with that part of its life business the profits of which are charged to corporation tax otherwise than under Case I or IV of Schedule D, and the income represented by the distribution shall be equal to the aggregate of the amount of the distribution and the amount of the tax credit in respect of the distribution.

(2) Where an assurance company is entitled to a tax credit in respect of a distribution chargeable to corporation tax by virtue of *subsection (1)*—

(*a*) the assurance company may, subject to *section 729(5)*, set the credit against the corporation tax, as reduced by virtue of *sections 713(3)* and *723(6)* or by either of those sections, chargeable on its profits for the accounting period in which the distribution is made and, where the credit exceeds that corporation tax, the excess shall be paid to the assurance company, and

(*b*) notwithstanding *sections 4* and *156*, the income represented by the distribution shall not be franked investment income for the purposes of *sections 83* and *157*.

Investment income reserved for policyholders.

[CTA76 s36; FA93 s11(e); FA96 s48(1); FA97 s68]

713.—(1) For the purposes of this section—

(*a*) ''unrelieved profits'' means the amount of profits on which corporation tax falls finally to be borne;

(*b*) the amount of tax which is or would be chargeable on a company shall be taken to be the amount of tax which is or would be so chargeable after allowance of any relief to which the company is or would be entitled otherwise than under this section or under *section 136*, *712(2)* or *730*.

(2) A claim may be made under this section by an assurance company in respect of unrelieved profits from investments referable to life business, other than special investment business, carried on by the company.

(3) Where in a financial year (being the financial year 1997 and subsequent financial years) the rate per cent (in this subsection and in *subsection (4)* referred to as ''the specified rate per cent'') of corporation tax specified in *section 21(1)(b)* exceeds the standard rate per cent for either of the years of assessment, part of each of which falls within the financial year, the corporation tax in respect of any of the unrelieved profits of the company for that year shall be reduced on a claim in that behalf being made by the company by so much of that tax as is equal to the amount by which—

(*a*) the corporation tax chargeable on the company for that year in respect of the part specified in *subsection (5)* of the unrelieved profits,

exceeds—

(*b*) the corporation tax which would be so chargeable in respect of that part of those profits if the specified rate per cent for each part of the financial year which coincides with a part of a year of assessment were equal to the standard rate per cent for the year of assessment.

(4) In computing that part of those profits for the purposes of *subsection (3)(b), section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)* were the specified rate per cent.

(5) (*a*) Subject to *paragraph (b)*, the franked investment income from investments held in connection with a company's life business shall be apportioned between—

(i) policyholders or annuitants, and

(ii) shareholders,

by attributing to policyholders or annuitants such fraction of that income as the fraction (in this subsection referred to as ''the appropriate fraction'') of the profits of the company's life business which, on a computation of such profits in accordance with the provisions applicable to Case I of Schedule D (whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods), would be excluded under *section 710(1)*.

(*b*) Where the franked investment income referred to in *paragraph (a)* exceeds the profits of the company's life business as computed in accordance with the provisions applicable to Case I of Schedule D other than *section 710*, the part of the franked investment income attributable to policy holders or annuitants shall be the aggregate of—

(i) the appropriate fraction of the franked investment income in so far as not exceeding those profits, and

(ii) the amount of the excess of the franked investment income over those profits.

(6) (*a*) Where the aggregate of the unrelieved profits and the shareholders' part of the franked investment income exceeds the profits of the company in respect of its life business for the relevant accounting periods computed in accordance with the provisions of Case I of Schedule D

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as extended by *sections 710* and *714* (whether or not the company is charged to tax under that Case), the part referred to in *subsection (3)* shall be the lesser of—

(i) the amount of that excess, and

(ii) the unrelieved profits,

and

(*b*) where the aggregate referred to in *paragraph (a)* is less than the profits of the company's life business as so computed, *subsection (3)* shall not apply.

(7) This section shall apply subject to *paragraph 24* of *schedule 32*.

Life business: computation of profits.

[CTA76 s38; FA93 s11(g)]

714.—(1) For the purposes of *sections 707* and *713*, the exclusion by *section 129* from the charge to corporation tax of franked investment income shall not prevent such income of a company resident in the State attributable to the investments of the company's life assurance fund from being taken into account as part of the profits in computing trading income in accordance with the provisions applicable to Case I of Schedule D.

(2) The corporation tax which would have been paid by a company referred to in *subsection (1)* if it had been charged to tax in respect of its life business under Case I of Schedule D shall be computed for the purposes of *section 707* as if so much of the trading income of the company in respect of its life business as does not exceed the franked investment income attributable by reference to *section 713(5)* to the shareholders of the company were charged to corporation tax, notwithstanding *section 21*, at a rate per cent determined by the formula—

$$\frac{A}{B} \times 100$$

where—

A is the aggregate amount of the tax credits comprised in the franked investment income received in the accounting period concerned by the company in connection with its life business, and

B is the aggregate amount of that franked investment income.

Annuity business: separate charge on profits.

[CTA76 s39; FA86 s59(b); FA96 s131(2) and Sch5 Pt2]

715.—(1) Except in the case of an assurance company charged to tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business, profits arising to an assurance company from pension business or general annuity business shall be treated as annual profits or gains within Schedule D and shall be chargeable to corporation tax under Case IV of that Schedule, and for that purpose—

(*a*) the business of each such class shall be treated separately, and

(*b*) subject to *paragraph (a)* and *subsection (2)*, the profits from each such class of business shall be computed in accordance with the provisions applicable to Case I of Schedule D.

(2) In making the computation in accordance with the provisions applicable to Case I of Schedule D— Pt.26 S.715

(*a*) *subsection (1)* of *section 710* shall apply with the necessary modifications and in particular shall apply as if there were deleted from that subsection all references to policyholders other than holders of policies referable to pension business,

(*b*) no deduction shall be allowed in respect of any expense, being an expense of management referred to in *section 707*, and

(*c*) there may be set off against the profits of pension business or general annuity business any loss, to be computed on the same basis as the profits, which was sustained in the same class of business in any previous accounting period while the company was within the charge to corporation tax in respect of that class of business in so far as that loss not already been so set off.

(3) *Section 399* shall not be taken as applying to a loss sustained by a company on its general annuity business or pension business.

(4) The treatment of an annuity as containing a capital element for the purposes of *section 788* shall not prevent the full amount of the annuity from being deductible in computing profits or from being treated as a charge on income for the purposes of the Corporation Tax Acts.

(5) Notwithstanding any other provision of the Corporation Tax Acts, any annuity paid by a company and referable to its excluded annuity business—

(*a*) shall not be treated as a charge on income for the purposes of the Corporation Tax Acts, and

(*b*) shall be deductible in computing for the purposes of Case I of Schedule D the profits of the company in respect of its life assurance business.

General annuity business.

[CTA76 s40; FA86 s59(c)]

716.—(1) In this section, ''taxed income'' means income charged to corporation tax, otherwise than under *section 715*, and franked investment income.

(2) In the case of a company carrying on general annuity business, the annuities paid by the company, in so far as referable to that business and in so far as they do not exceed the taxed income of the part of the annuity fund so referable, shall be treated as charges on income.

(3) Notwithstanding any other provision of the Corporation Tax Acts, any annuities which under *subsection (2)* are treated as charges on income of a company (in this subsection referred to as ''the first-mentioned company'') for an accounting period shall not be allowed as deductions against any profits (whether of the first-mentioned company or of any other company) other than against that part of the total profits (including, where a claim is made under *section 157* for the purposes mentioned in *subsection (2)(a)* of that section, any franked investment income) arising in that accounting period to the first-mentioned company from its general annuity business.

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(4) In computing under *section 715* the profits arising to an assurance company from general annuity business—

(*a*) taxed income shall not be taken into account as part of those profits, and

(*b*) of the annuities paid by the company and referable to general annuity business—

(i) those which under *subsection (2)* are treated as charges on income shall not be deductible, and

(ii) those which are not so treated shall, notwithstanding *section 76*, be deductible.

(5) A company not resident in the State which carries on through a branch or agency in the State any general annuity business shall not be entitled to treat any part of the annuities paid by it which are referable to that business as paid out of profits or gains brought into charge to income tax.

Pension business.

[CTA76 s41; FA88 s30(1) and (2)(c); FA91 s38]

717.—(1) Exemption from corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an assurance company's life assurance fund and separate annuity fund, if any, as is referable to pension business.

(2) (*a*) In this subsection, ''financial futures'' and ''traded options'' mean respectively financial futures and traded options which are for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State.

(*b*) For the purposes of *subsection (1)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(3) The exemption from tax conferred by *subsection (1)* shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.

(4) Subject to *subsection (5)*, the exclusion by *section 129* from the charge to corporation tax of franked investment income shall not prevent such income being taken into account as part of the profits in computing under *section 715* income from pension business.

(5) (*a*) Where for any accounting period there is apart from this subsection a profit arising to an assurance company from pension business (computed in accordance with *section 715*) and the company so elects as respects all or any part of its franked investment income arising in that period, being an amount of franked investment income not exceeding the amount of the profit arising from pension business, *subsections (1)* and *(4)* shall not apply to the franked investment income to which the election relates.

(*b*) An election under *paragraph (a)* shall be made by notice in writing given to the inspector not later than 2 years after the end of the accounting period to which the election relates or within such longer period as the Revenue Commissioners may by notice in writing allow.

(6) In computing under *section 715* the profits from pension business, annuities shall be deductible notwithstanding *section 76(5)*, and a company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to pension business. Pt.26 S.717

Foreign life assurance funds.

[CTA76 s42(1) to (5) and (8)]

718.—(1) In this section, ''foreign life assurance fund'' means—

(*a*) any fund representing the amount of the liability of an assurance company in respect of its life business with policyholders and annuitants residing outside the State whose proposals were made to, or whose annuity contracts were granted by, the company at or through a branch or agency outside the State, and

(*b*) where such a fund is not kept separately from the life assurance fund of the company, such part of the life assurance fund as represents the liability of the company under such policies and annuity contracts, such liability being estimated in the same manner as it is estimated for the purposes of the periodical returns of the company.

(2) Corporation tax under Case III of Schedule D on income arising from securities and possessions in any place outside the State which form part of the investments of the foreign life assurance fund of an assurance company shall be computed on the full amount of the actual sums received in the State from remittances payable in the State, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of such remittances, property, money or value brought into the State without any deduction or abatement.

(3) Where—

(*a*) any securities issued by the Minister for Finance with a condition in the terms specified in *section 43*, or

(*b*) any stocks or other securities to which *section 49* applies and which are issued with either or both of the conditions specified in *subsection (2)* of that section,

for the time being form part of the investments of the foreign life assurance fund of an assurance company, the income arising from any of those stocks or securities, if applied for the purposes of that fund or reinvested so as to form part of that fund, shall not be liable to corporation tax.

(4) Where the Revenue Commissioners are satisfied that any income arising from the investments of the foreign life assurance fund of an assurance company has been remitted to the State and invested as part of the investments of that fund in any stocks or securities of a type referred to in *subsection (3)*, that income shall not be liable to corporation tax and any such tax paid on that income shall if necessary be repaid to the company on the making of a claim.

(5) Where income from investments of the foreign life assurance fund of an assurance company has been relieved from corporation tax in accordance with this section, a corresponding reduction shall be made—

(*a*) in the relief granted under *section 707* in respect of expenses of management, and

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(*b*) in any amount on which the company is chargeable to corporation tax by virtue of *section 715*—

(i) in respect of general annuity business, or

(ii) in respect of pension business,

in so far as the investment income relieved is referable to general annuity business or pension business, as the case may be.

(6) Where this section applies in relation to income arising from investments of any part of an assurance company's life assurance fund, it shall apply in the like manner in relation to chargeable gains accruing from the disposal of any such investments, and losses so accruing shall not be allowable losses.

Deemed disposal and reacquisition of certain assets.

[CTA76 s46A; FA92 s44(d); FA93 s11(j); FA97 s69]

719.—(1) In this section and in *section 720*—

''average'', in relation to 2 amounts, means 50 per cent of the aggregate of those 2 amounts;

''closing'', in relation to an accounting period, means the position at the end of the valuation period which coincides with that accounting period or in which that accounting period falls;

''foreign life assurance fund'' has the same meaning as in *section 718*;

''investment reserve'', in relation to an assurance company, means the excess of the value of the assets of the company's life business fund over the liabilities of the life business;

''life business fund'' means the fund or funds maintained by an assurance company in respect of its life business other than its special investment business;

''linked assets'' means assets of an assurance company identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined;

''linked liabilities'' means liabilities in respect of benefits to be determined by reference to the value of linked assets;

''opening'', in relation to an accounting period, means the position at the beginning of the valuation period which coincides with that accounting period or in which that accounting period falls;

''with-profits liabilities'' means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus.

(2) Each asset of the life business fund of an assurance company on the day on which an accounting period of the company ends shall, subject to this section, be deemed to have been disposed of and immediately reacquired by the company on that day at the asset's market value on that day.

(3) *Subsection (2)* shall not apply to—

(*a*) (i) assets to which *section 607* applies, other than, with effect as on and from the 26th day of March, 1997,

where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which that section does not apply, and

(ii) assets which are strips within the meaning of *section 55*,

(*b*) assets linked solely to pension business or special investment business, or

(*c*) assets of the foreign life assurance fund,

and, in relation to other assets which are not assets linked solely to life assurance business (excluding pension business, general annuity business and special investment business), shall apply only to the relevant chargeable fraction for an accounting period of each class of asset.

(4) In *subsection (3)*, ''the relevant chargeable fraction for an accounting period''—

(*a*) in relation to linked assets, means the fraction of which—

(i) the denominator is the average of such of the opening and closing life business liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked assets other than—

(I) assets linked solely to life assurance business (excluding pension business, general annuity business and special investment business), special investment business or pension business, and

(II) assets of the foreign life assurance fund, and

(ii) the numerator is the average of such of the opening and closing liabilities within *subparagraph (i)* as are liabilities of business the profits of which are not charged to tax under Case I or IV of Schedule D, and

(*b*) in relation to assets other than linked assets, means the fraction of which—

(i) the denominator is the aggregate of—

(I) the average of the opening and closing life business liabilities, other than liabilities in respect of benefits to be determined by reference to the value of linked assets and liabilities of the foreign life assurance business or special investment business, and

(II) the average of the opening and closing amounts of the investment reserve, and

(ii) the numerator is the aggregate of—

(I) the average of such of the opening and closing liabilities within *subparagraph (i)* as are liabilities of business the profits of which are not

charged to tax under Case I or IV of Schedule D, and

(II) the average of the appropriate parts of the opening and closing amounts of the investment reserve.

(5) (*a*) In this subsection, ''liabilities'' does not include the liabilities of the foreign life assurance business or special investment business.

(*b*) In *subsection (4)*, ''appropriate part'', in relation to the investment reserve, means—

(i) where none, or only an insignificant proportion, of the liabilities of the life business are with-profits liabilities, the part of that reserve which bears to the whole the same proportion as the amount of the liabilities of business, the profits of which are not charged to tax under Case I or IV of Schedule D, which are not linked liabilities bears to the whole amount of the liabilities of the life business which are not linked liabilities, and

(ii) in any other case, the part of that reserve which bears to the whole the same proportion as the amount of the with-profits liabilities of business, the profits of which are not charged to tax under Case I or IV of Schedule D, bears to the whole amount of the with-profits liabilities of the life business.

(6) For the purposes of this section, in applying *section 557* to the computation of gains accruing to an assurance company on the disposal, on the day on which an accounting period of the company ends, of assets which are not linked solely to life assurance business (excluding pension business, general annuity business or special investment business), the company shall be deemed to have acquired all of the assets of its life business fund, other than the assets it acquired in that accounting period, at their respective market values on the day immediately before the day on which that period began.

(7) For the purposes of this section, assets of the foreign life assurance fund or special investment fund and liabilities of the foreign life assurance business or special investment business shall be disregarded in determining the investment reserve.

Gains or losses arising by virtue of *section 719*.

[CTA76 s46B; FA92 s44(d); FA95 s69; FA96 s50]

720.—(1) Subject to *subsections (2)* to *(4)*, chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of *section 719* to have been made in a company's accounting period (other than a period in which the company ceased to carry on life business) shall be treated, subject to *paragraphs (b)* and *(c)*, as not accruing to the company, but instead—

(*a*) there shall be ascertained the difference (in this section referred to as ''the net amount'') between the aggregate of those gains and the aggregate of those losses,

(*b*) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company in the accounting period, and

(*c*) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing in each succeeding accounting period until the whole amount has been accounted for. Pt.26 S.720

(2) As respects chargeable gains or allowable losses accruing on disposals of rights under reinsurance contracts (within the meaning of *section 594(4)*) deemed by virtue of *section 719* to have been made in the accounting period or part of an accounting period falling wholly within the year ending on—

(*a*) the 31st day of December, 1997, this section shall not apply to three-sevenths,

(*b*) the 31st day of December, 1998, this section shall not apply to two-sevenths, or

(*c*) the 31st day of December, 1999, this section shall not apply to one-seventh,

of those chargeable gains and allowable losses.

(3) For any accounting period of less than one year, the fraction of one-seventh referred to in *subsection (1)(c)* shall be proportionately reduced and, where this subsection has applied in relation to any accounting period before the last for which *subsection (1)(c)* applies, the fraction treated as accruing in that last accounting period shall be reduced so as to secure that no more than the whole of the net amount has been accounted for.

(4) Where a company ceases to carry on life business before the beginning of the last of the accounting periods for which *subsection (1)(c)* would apply in relation to a net amount, the fraction of that amount which is treated as accruing in the accounting period in which the company ceases to carry on life business shall be such as to secure that the whole of the net amount has been accounted for.

(5) Where in an accounting period a company incurs a loss on the disposal (in this subsection referred to as the ''first-mentioned disposal'') of an asset the gain or loss in respect of a deemed disposal of which was included in a net amount to which *subsection (1)(b)* applied for any preceding accounting period, then, so much of the allowable loss on the first-mentioned disposal as is equal to the excess of the amount of the loss over the amount which, if *section 719* had not been enacted, would have been the allowable loss on the first-mentioned disposal shall be treated for the purposes of this section as an allowable loss which would otherwise accrue on disposals deemed by virtue of *section 719* to have been made in the company's accounting period.

Life policies carrying rights not in money.

[CTA76 s48]

721.—Where any investments or other assets are, in accordance with a policy issued in the course of life business carried on by an assurance company, transferred to the policyholder, the policyholder's acquisition of the assets and the disposal of the assets to the policyholder shall be deemed to be for a consideration equal to the market value of the assets—

(*a*) for the purposes of the Capital Gains Tax Acts, and

(*b*) for the purposes of computing income in accordance with Case I or IV of Schedule D.

Pt.26
Benefits from life policies issued before 6th April, 1974.

[CTA76 s49]

722.—(1) This section shall apply in relation to policies of life assurance issued before the 6th day of April, 1974, by a company carrying on life business, being policies which—

(*a*) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but

(*b*) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.

(2) Where—

(*a*) the investments of the company's life assurance fund, in so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and

(*b*) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,

then, the company shall be entitled as against the person receiving the benefits to retain out of the benefits a part of the benefits not exceeding in amount or value corporation tax at the full rate in respect of the chargeable gain referred to in *paragraph (b)* computed without regard to any amount retained under this subsection and reduced in accordance with *section 78(1)*.

CHAPTER 2

Special investment policies

Special investment policies.

[CTA76 s36A(1) to (6) and (8); FA93 s11(f); FA94 s33; FA96 s49]

723.—(1) In this section—

''excluded shares'' means—

(*a*) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990,

(*b*) shares in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), or

(*c*) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

''inspector'', in relation to any matter, means an inspector of taxes appointed under *section 852*, and includes such other officers as the Revenue Commissioners shall appoint in that behalf;

''mortality cover'' means any amount payable under a policy of life assurance in the event of the death of a person specified in the terms of that policy;

''ordinary shares'' means shares forming part of a company's ordinary share capital;

''qualifying shares'' means ordinary shares—

(*a*) in a company resident in the State, or

(*b*) (i) listed in the official list of the Irish Stock Exchange, or

(ii) dealt in on the smaller companies market, or the unlisted securities market, of the Irish Stock Exchange,

other than excluded shares;

''special investment business'' means so much of the life business of an assurance company as is connected with special investment policies;

''special investment fund'' means a fund in respect of which the conditions specified in *subsection (2)* are satisfied;

''special investment policy'' means a policy of life assurance issued by an assurance company to an individual on or after the 1st day of February, 1993, in respect of which—

(*a*) the conditions specified in *subsection (3)* are satisfied, and

(*b*) a declaration of the kind specified in *subsection (4)* has been made to the assurance company;

''specified qualifying shares'', in relation to a special investment fund, means qualifying shares in a company the issued share capital of which has a market value of less than £100,000,000 when the shares are acquired for the fund.

(2) The conditions referred to in the definition of ''special investment fund'' are as follows:

(*a*) the fund shall be owned by an assurance company;

(*b*) the fund shall be kept separately from its other funds, if any, by the assurance company;

(*c*) the fund shall represent only the liabilities of the assurance company in respect of its special investment business, and accordingly there shall not be any arrangements whereby any asset of the fund is connected directly or indirectly with any business of the company other than its special investment business;

(*d*) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of the fund shall not be less than—

(i) as respects qualifying shares, 40 per cent, and

(ii) as respects specified qualifying shares, 6 per cent,

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of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(*e*) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets of the fund shall not be less than—

(i) as respects qualifying shares, 45 per cent, and

(ii) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(*f*) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets of the fund shall not be less than—

(i) as respects qualifying shares, 50 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time;

(*g*) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of the fund shall not be less than—

(i) as respects qualifying shares, 55 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are assets of the fund at that time,

and for the purposes of *paragraphs (d)* to *(g)* the amount of the consideration given for assets of the fund shall be determined in accordance with *sections 547*, *580* and *724*.

(3) The conditions referred to in the definition of ''special investment policy'' are as follows:

(*a*) the policy of life assurance concerned shall be designated by the assurance company concerned as a special investment policy;

(*b*) any payments received by the company in respect of the policy shall not, or shall not in the aggregate if there is more than one such payment, exceed £50,000;

(*c*) the company shall ensure that its liability in respect of the policy does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was received by it in respect of the policy;

(*d*) the policy shall not be issued to or owned by an individual who is not of full age;

(*e*) the policy shall be issued to an individual—

(i) who is beneficially entitled to, and

(ii) to whom there shall be paid,

all amounts, other than mortality cover, payable under the policy by the company;

(*f*) except in the case of a policy issued to and owned jointly only by a couple married to each other, the policy shall not be a joint policy;

(*g*) unless the policy is issued to and owned jointly only by a couple married to each other, the policy shall be the only such policy owned by the individual;

(*h*) if the policy is to be issued to and owned jointly only by a couple married to each other, it shall be the only such policy, or one of 2 only such policies, owned only by them;

and for the purposes of *paragraphs (d)* to *(h)* references to ownership of a policy shall be construed as references to beneficial ownership of the policy.

(4) The declaration referred to in *paragraph (b)* of the definition of ''special investment policy'' shall be a declaration in writing to an assurance company which—

(*a*) (i) is made by the individual (in this section referred to as ''the declarer'') to whom any amounts, other than mortality cover, are payable by the assurance company in respect of the policy in respect of which the declaration is made, and

(ii) is signed by the declarer,

(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time when the declaration is made the conditions referred to in *paragraphs (d)* to *(h)* of *subsection (3)* are satisfied in relation to the policy in respect of which the declaration is made,

(*d*) contains the full name and address of the individual beneficially entitled to any amounts, other than mortality cover, payable in respect of the policy in respect of which the declaration is made,

(*e*) contains an undertaking by the declarer that, if any of the conditions specified in *paragraphs (d)* to *(h)* of *subsection (3)* cease to be satisfied in respect of the policy in respect of which the declaration is made, the declarer will notify the assurance company accordingly, and

(*f*) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.

(5) (*a*) An assurance company shall—

(i) keep and retain for not less than the longer of the following periods—

(I) a period of 6 years, and

(II) a period which, in relation to the policy in respect of which the declaration is made, ends not earlier than 3 years after the date on which the company ceases to have any liability in respect of the policy, and

(ii) on being so required by notice given to it in writing by an inspector, make available to the inspector within the time specified in the notice,

all declarations of the kind specified in *subsection (4)* which have been made to the company.

(*b*) The inspector may examine and take copies of or of extracts from a declaration made available to him or her under *paragraph (a)*.

(6) The corporation tax chargeable on any profits on which corporation tax falls finally to be borne which are attributable to the special investment fund of an assurance company shall be reduced, for the purposes of the Tax Acts other than *section 707(4)*, so that, before it is reduced by any credit, relief or other deduction under the Tax Acts apart from this section, it is 10 per cent of those profits; but, in computing profits for the purposes of this subsection, *section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)* were the rate per cent of corporation tax specified in *section 21(1)(b)*.

(7) For the purposes of computing income arising from, or chargeable gains accruing from the disposal of, assets of the special investment fund of an assurance company—

(*a*) each asset of the fund on the day on which an accounting period of the company ends shall be deemed to have been disposed of and immediately reacquired at the asset's market value on that day,

(*b*) without prejudice to the treatment of losses on such shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares (within the meaning of *Part 16*) in a qualifying company (within the meaning of that Part) shall not be chargeable gains,

(*c*) *section 712* shall not apply to distributions in respect of the shares mentioned in *paragraph (b)*, and

(*d*) *section 726* shall not apply.

Transfer of assets into or out of special investment fund.

[CTA76 s36B; FA93 s11(f)]

724.—Where an assurance company transfers the whole or part of an asset (any interest in or rights over an asset being regarded for the purposes of this section as part of the asset)—

(*a*) which it owned before the transfer, or which was created by the transfer, into, or

(*b*) which it owns after the transfer, out of,

its special investment fund, the company shall be deemed to have disposed of and immediately reacquired the asset or the part of the asset, as the case may be, at the market value of the asset or the part of the asset, as the case may be, at the time of the transfer.

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Special investment policies: breaches of conditions.

[CTA76 s36C; FA93 s11(f)]

725.—(1) For the purposes of this section, a policy of life assurance held by an individual, whether married or not, shall not be a special investment policy at any particular time if—

(*a*) as respects the policy—

(i) a declaration of the kind specified in *section 723(4)* has not been made, or

(ii) any of the conditions referred to in *section 723(3)* is not satisfied at that time,

or

(*b*) as respects the individual, he or she has at that time a beneficial interest prohibited by *section 839* in classes of investment mentioned in *paragraphs (a)* to *(d)* of *subsection (1)* of that section.

(2) Where an assurance company becomes aware at any time that a policy of life assurance which it has treated as a special investment policy is not such a policy—

(*a*) the assurance company shall ensure that in accordance with *section 723(2)(c)* its special investment fund does not after that time represent its liability in respect of the policy, and

(*b*) for the purposes of the Tax Acts other than *section 958(4)*, the liability to corporation tax of the company for the accounting period in which it became aware that the policy was not a special investment policy shall be increased by an amount determined by the formula—

$$(A - B) \times \frac{10}{9} \times \frac{S - 10}{100}$$

where—

A is the amount which was the assumed liability, other than the liability, if any, in respect of mortality cover, of the company in respect of the policy immediately before it became aware that the policy was not a special investment policy,

B is—

(i) the amount which was the liability, other than the liability, if any, in respect of mortality cover, of the company in respect of the policy when the policy ceased to be a special investment policy, or

(ii) if the policy was never a special investment policy, the amount of the aggregate of the payments received and not repaid by the company in respect of the policy, and

S is the standard rate per cent for the year of assessment in which that accounting period ends.

Provisions applying to overseas life assurance companies

Investment income.

[CTA76 s43; FA93 s11(h); FA95 s64; FA96 s132(2) and Sch5 PtII]

726.—(1) Any income of an overseas life assurance company from the investments of its life assurance fund (excluding the pension fund, general annuity fund and special investment fund, if any), wherever received, shall, to the extent provided in this section, be deemed to be profits comprised in Schedule D, and shall be charged to corporation tax under Case III of Schedule D.

(2) Distributions received from companies resident in the State shall be taken into account under this section notwithstanding their exclusion from the charge to corporation tax.

(3) Where an overseas life assurance company is entitled to an amount (in this subsection referred to as ''the first amount''), being an amount which corresponds to a tax credit, by virtue of having received a distribution from a company not resident in the State, the distribution shall be treated for the purposes of this section as representing income equal to the aggregate of the amount or value of that distribution and the first amount.

(4) A portion only of the income from the investments of the life assurance fund (excluding the pension fund, general annuity fund and special investment fund, if any) shall be charged in accordance with *subsection (1)*, and for any accounting period that portion shall be determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the total income from those investments for that period,

B is the average of the liabilities for that period to policyholders resident in the State and to policyholders resident outside the State whose proposals were made to the company at or through its branch or agency in the State, and

C is the average of the liabilities for that period to all the company's policyholders,

but any reference in this subsection to liabilities does not include liabilities in respect of special investment, general annuity or pension business.

(5) For the purposes of this section—

(*a*) the liabilities of an assurance company attributable to any business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return, and

(*b*) the average of any liabilities for an accounting period shall be taken as 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

(6) (*a*) For the purposes of this subsection—

(i) ''the average of branch liabilities for an accounting period'' means the aggregate of the amounts represented by B in *subsection (4)*, B in *section 727(2)* and the average of the liabilities attributable to pension business for the accounting period, and

(ii) ''the assets to which this subsection applies'' are assets the gains from the disposal of which are chargeable to corporation tax by virtue of *subsections (3)* and *(6)* of *section 29* together with assets the gains from the disposal of which would be so chargeable but for *sections 551, 607* and *613*.

(*b*) Where the average of branch liabilities for an accounting period exceeds the mean value for the accounting period of the assets to which this subsection applies, the amount to be included in profits under *section 78(1)* shall be an amount determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the amount which apart from this subsection would be so included in profits,

B is the average of branch liabilities for the accounting period, and

C is the mean value for the accounting period of the assets to which this subsection applies.

(7) *Section 70(1)* as applied to corporation tax shall not apply to income to which *subsection (1)* applies.

General annuity and pension business.

[CTA76 s44]

727.—(1) Nothing in the Corporation Tax Acts shall prevent the distributions of companies resident in the State from being taken into account as part of the profits in computing under *section 715* the profits arising from pension business and general annuity business to an overseas life assurance company.

(2) Any charge to tax under *section 715* for any accounting period on profits arising to an overseas life assurance company from general annuity business shall extend only to a portion of the profits arising from that business, and that portion shall be determined by the formula—

$$\frac{A \times B}{C}$$

where—

A is the total amount of those profits,

B is the average of the liabilities attributable to that business for the relevant accounting period in respect of contracts with persons resident in the State or contracts with persons resident outside the State whose proposals were made to the company at or through its branch or agency in the State, and

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C is the average of the liabilities attributable to that business for that accounting period in respect of all contracts.

(3) For the purposes of this section—

(*a*) the liabilities of an assurance company attributable to general annuity business at any time shall be ascertained by reference to the net liabilities of the company as valued by an actuary for the purposes of the relevant periodical return, and

(*b*) the average of any liabilities for an accounting period shall be taken as 50 per cent of the aggregate of the liabilities at the beginning and end of the valuation period which coincides with that accounting period or in which that accounting period falls.

Expenses of management.

[CTA76 s33(3); FA92 s44(b)]

728.—The relief under *section 707* available to an overseas life assurance company in respect of its expenses of management shall be limited to expenses attributable to the life assurance business carried on by the company at or through its branch or agency in the State.

Income tax, foreign tax and tax credit.

[CTA76 s45; FA88 s31(2) and Sch2 PtI par2(2); FA97 s37 and Sch2 pars1 and 2]

729.—(1) *Section 77(6)* shall not affect the liability to tax of an overseas life assurance company in respect of the investment income of its life assurance fund under *section 726* or in respect of the profits of its annuity business under *sections 715*, *717* and *727.*

(2) For the purposes of *section 25(3)* as it applies to life business, the amount of the income tax referred to in that section which shall be available for set-off under that section in an accounting period shall be limited in accordance with *subsections (3)* and *(4)*.

(3) Where the company is chargeable to corporation tax for an accounting period in accordance with *section 726* in respect of the income from the investments of its life assurance fund, the amount of income tax available for set-off against any corporation tax assessed for that period on that income shall not exceed an amount equal to income tax at the standard rate on the portion of income from investments which is chargeable to corporation tax by virtue of *subsection (4)* of that section.

(4) Where the company is chargeable to corporation tax for an accounting period in accordance with *section 727* on a proportion of the total amount of the profits arising from its general annuity business, the amount of income tax available for set-off against any corporation tax assessed for that period on those profits shall not exceed an amount equal to income tax at the standard rate on the like proportion of the income from investments included in computing those profits.

(5) Where an overseas life assurance company receives a distribution in respect of which it is entitled to a tax credit, the company may claim to have that credit set off against any corporation tax assessed on the company under *section 726* or *727* for the accounting period in which the distribution is received, but the amount of the tax credit, or aggregate of tax credits if more than one distribution has been received, which may be so set off shall not exceed an amount determined by the formula—

$$\frac{S \times (A - B)}{100}$$

where—

S is the standard credit rate per cent for the year of assessment in which the distribution is made, Pt.26 S.729

A is the portion of the income from investments which is chargeable to corporation tax by virtue of *section 726(4)* or, as the case may be, the portion determined in accordance with *subsection (4)* of the income from investments included in computing the total amount of the profits of the company arising from its general annuity business, and

B is the aggregate of the payments, the income tax on which, having regard to *subsection (3)* or *(4)*, as the case may be, the company is entitled to set off against corporation tax by virtue of a claim under *section 25(3)*.

(6) *Section 828(4)* shall not affect the liability to tax under *section 726* of an overseas life assurance company in respect of gains from the disposal of investments held in connection with its life business.

(7) For the purposes of *subsection (5),* where an accounting period begins before the 6th day of April, 1997, and ends on or after that date, it shall be divided into one part beginning on the day which the accounting period begins and ending on the 5th day of April, 1997, and another part beginning on the 6th day of April, 1997, and ending on the day on which the accounting period ends and both parts shall be treated as separate accounting periods.

Tax credit in respect of distributions.

[CTA76 s46; FA93 s11(i)]

730.—Where an overseas life assurance company—

(*a*) receives a distribution from a company resident in the State, and

(*b*) is not entitled to, or disclaims, by notice in writing to the appropriate inspector (within the meaning of *section 950(1)*), relief in respect of the distribution under—

(i) the Convention set out in *Schedule 25* as applied for corporation tax, or

(ii) arrangements made under *section 826* as applied for corporation tax,

then, the overseas life assurance company shall be deemed to be entitled to such a tax credit in respect of the distribution as it would be entitled to if it were a company resident in the State, and accordingly the income represented by the distribution shall be the aggregate of the distribution and the tax credit.

PART 27

Unit Trusts and Offshore Funds

CHAPTER 1

Unit trusts

Chargeable gains accruing to unit trusts.

[CGTA75 s31; FA77 s34; FA79 s37(1); FA93 s19; FA94 s64]

731.—(1) In this section, ''capital distribution'' means any distribution from a unit trust, including a distribution in the course of terminating the unit trust, in money or money's worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

(2) For the purposes of the Capital Gains Tax Acts and without prejudice to *section 567* and *sections 574* to *578*, chargeable gains accruing to a unit trust in any year of assessment shall be assessed and charged on the trustees of the unit trust.

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(3) The trustees of a unit trust shall for the purposes of the Capital Gains Tax Acts be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the State unless the general administration of the unit trust is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State.

(4) Where a person receives or becomes entitled to receive in respect of units in a unit trust any capital distribution from the unit trust, such person shall be treated as having in consideration of that capital distribution disposed of an interest in the units.

(5) (*a*) Where throughout a year of assessment all the issued units in a unit trust are assets such that if those units were disposed of by the unit holder any gain accruing would be wholly exempt from capital gains tax (otherwise than by reason of residence or by virtue of *section 739(3)*), gains accruing to the unit trust in that year shall not be chargeable gains.

(*b*) For the purposes of any assessment to capital gains tax, *paragraph (a)* shall not apply as respects a unit trust to which *subsection (6)* applies.

(6) Gains accruing on the disposal of units in a unit trust shall not be chargeable gains for the purposes of the Capital Gains Tax Acts where—

(*a*) the trustees of the unit trust have at all times (but not taking into account any time before the 6th day of April, 1974) been resident and ordinarily resident in the State, and

(*b*) the unit trust is a scheme which is established for the purpose or has the effect, solely or mainly, of providing facilities for the participation by the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever and which is administered by the holder of a licence under the Insurance Act, 1936, and for participation in which, in respect of units first issued after the 14th day of June, 1973, a policy of assurance on human life is required to be effected (but so that the units do not become the property of the owner of the policy either as benefits or otherwise).

(7) (*a*) Subject to *paragraph (b)*, where there is a disposal in any year of assessment of units in a unit trust—

(i) not being an undertaking for collective investment (within the meaning of *section 738*) which began carrying on business on or after the 25th day of May, 1993,

(ii) all the assets of which were throughout the year of assessment 1993-94 assets, whether mentioned in section 19 of the Capital Gains Tax Act, 1975, or in any other provision of the Capital Gains Tax Acts, to which that section applied, and

(iii) the person disposing of the units acquired the units before the 6th day of April, 1994,

then, the chargeable gain on the disposal shall be computed as if the units had been sold and immediately reacquired by that person on the 5th day of April, 1994, at their market value at that date.

(*b*) *Paragraph (a)* shall not apply in relation to the disposal of units—

(i) if as a consequence of the application of that paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if that paragraph did not apply, or

(ii) if as a consequence of the application of that paragraph a loss would so accrue and either a smaller loss or a gain would accrue if that paragraph did not apply,

and accordingly in a case to which *subparagraph (i)* or *(ii)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to this subsection (other than this paragraph) but, in a case where this paragraph would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the units were acquired by the person disposing of them for a consideration such that neither a gain nor a loss accrued to that person on making the disposal.

Special arrangements for qualifying unit trusts.

[CGTA75 s32; FA77 s35; CGT(A)A78 s16 and Sch1 par9; FA97 s146(2) and Sch9 PtII]

732.—(1) In this section—

''securities'' includes securities within *section 607* and stocks, shares, bonds and obligations of any government, municipal corporation, company or other body corporate;

''quoted securities'' means securities which, at any time at which they are to be taken into account for the purposes of this section, or at any time in the period of 6 years immediately before such time, have or have had quoted market values on a stock exchange in the State or elsewhere.

(2) This section shall apply—

(*a*) to a unit trust (in this section referred to as a ''qualifying unit trust'')—

(i) which is a registered unit trust scheme (within the meaning of section 3 of the Unit Trusts Act, 1972),

(ii) the trustees of which are resident and ordinarily resident in the State,

(iii) the prices of units in which are published regularly by the managers,

(iv) all the units in which are of equal value and carry the same rights, and

(v) which, at all times since it was registered in the register established under the Unit Trusts Act, 1972, but

subject to *subsection (7)*, satisfied the conditions specified in *subsection (6)*, and

(*b*) to disposals of assets which are units in a qualifying unit trust (in this section referred to as ''qualifying units'').

(3) Chargeable gains accruing to a qualifying unit trust in any year of assessment shall be chargeable to capital gains tax at one-half of the rate specified in *section 28(3)*.

(4) Chargeable gains which derive from the disposal of qualifying units and accrue to a person chargeable to capital gains tax shall be chargeable to tax at one-half of the rate at which those gains would be chargeable under the Capital Gains Tax Acts apart from this subsection.

(5) For any accounting period of a company, being an accounting period for which the company is chargeable to corporation tax in respect of chargeable gains—

(*a*) where the total amount of chargeable gains accruing to the company for the accounting period derives from the disposal of qualifying units, the amount which apart from this section would be included in respect of chargeable gains in the company's total profits for the accounting period under *section 78(1)* shall be reduced by 50 per cent,

(*b*) where the total amount of chargeable gains accruing to the company for the accounting period includes—

(i) an amount in respect of such chargeable gains on the disposal of qualifying units, and

(ii) an amount in respect of such chargeable gains on the disposal of assets other than qualifying units,

the amount which apart from this section would be included in respect of chargeable gains in the company's total profits for the accounting period under *section 78(1)* shall be reduced by such amount as bears to the amount to be so included the same proportion as one-half of the amount referred to in *subparagraph (i)* bears to the total of the amounts referred to in *subparagraphs (i)* and *(ii)*.

(6) The conditions referred to in *subsection (2)(a)(v)* are that—

(*a*) not less than 80 per cent of the units were held by persons who acquired them pursuant to an offer made to the general public,

(*b*) the number of unit holders was not less than 50 and no one unit holder was the beneficial owner of more than 5 per cent of the units in issue at any time, and for the purposes of this paragraph a person and any persons with whom such person is connected shall be treated as one unit holder,

(*c*) the value of quoted securities held by the trustees on behalf of the unit trust was not less than 80 per cent by value of the assets so held by the trustees, and

(*d*) the securities held by the trustees on behalf of the unit trust in any one company did not exceed 15 per cent by value of the total securities so held by the trustees. Pt.27 S.732

(7) The Revenue Commissioners may treat a unit trust as a qualifying unit trust for the purposes of this section notwithstanding that one or more of the conditions specified in *subsection (6)* was or were not complied with in relation to the unit trust—

(*a*) for the period ending on the 5th day of April, 1978, in the case where the unit trust became registered in the register established under the Unit Trusts Act, 1972, before the 6th day of April, 1976, and

(*b*) for the period ending on a date not more than 2 years after the date on which the unit trust became registered in that register, in the case where the unit trust became so registered on or after the 6th day of April, 1976.

Reorganisation of units in unit trust scheme.

[CGTA75 s51(1) and Sch2 par2A; FA90 s87]

733.—(1) In this section, references to a reorganisation of units in a trust scheme include—

(*a*) any case where persons are, whether for payment or not, allotted units in the scheme in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of units in the scheme or of any class of units in the scheme, and

(*b*) any case where there is more than one class of units and the rights attached to units of any class are altered.

(2) (*a*) Subject to *paragraph (b)*, *section 584* shall apply with any necessary modification in relation to a reorganisation or reduction of units in any unit trust scheme registered under the Unit Trusts Act, 1972, or authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), as if (except as respects *subsection (7)* of that section)—

(i) that scheme were a company, and

(ii) the units in that scheme were shares in the company.

(*b*) Where but for this paragraph this section would apply to any reorganisation or reduction of units in a unit trust scheme in a year of assessment so that units which are deemed not to be chargeable assets for that year for the purposes of the Capital Gains Tax Acts would be treated as ''original shares'' or a ''new holding'' within the meaning of *section 584*, that section shall not apply to that reorganisation or reduction of units in the unit trust scheme.

(3) The references in *subsection (2)* to *section 584* do not include references to that section as applied by *section 585* or *586*.

PT.27
Taxation of collective investment undertakings.

[FA89 s18(1) to (9), (11), (11A) and (12); FA91 s19 (1) and (2); FA93 s20(a); FA94 s25(1); S.I. No. 227 of 1994; FA95 s38; FA96 s35(1); FA97 s32]

734.—(1) (*a*) In this section and in *Schedule 18*—

''accounting period'', in relation to a collective investment undertaking, means the chargeable period or its basis period (within the meaning of *section 321(2)*) on the income or profits of which the undertaking is chargeable to income tax or corporation tax, as the case may be, for any chargeable period (within the meaning of that section), or would be so chargeable but for an insufficiency of income or profits, and—

(i) where 2 basis periods overlap, the period common to both shall be deemed to fall in the first basis period only,

(ii) where there is an interval between the end of the basis period for one chargeable period and the basis period for the next chargeable period, the interval shall be deemed to be part of the second basis period, and

(iii) the reference in *paragraph (i)* to the overlapping of 2 periods shall be construed as including a reference to the coincidence of 2 periods or to the inclusion of one period in another, and the reference to the period common to both shall be construed accordingly;

''the Acts'' means the Tax Acts and the Capital Gains Tax Acts;

''the airport'' has the same meaning as in the Customs-Free Airport Act, 1947;

''appropriate tax'', in relation to the amount of any relevant payment made by a collective investment undertaking or in relation to any amount of undistributed relevant income of such an undertaking, as the case may be, means a sum representing tax on the amount of the payment or the amount of the undistributed relevant income, as appropriate, at a rate equal to the standard rate of income tax in force at the time of the payment or at the end of the accounting period to which the undistributed relevant income relates, as the case may be, after making a deduction from that sum of an amount equal to, or to the aggregate of—

(i) in the case of a relevant payment—

(I) in so far as it is made wholly or partly out of relevant income which at a previous date had been or formed part of the undistributed relevant income of the undertaking, the amount of any appropriate tax deducted—

(A) from the relevant income, or

(B) where the payment, or that part of the payment which is made out of

relevant income, is less than the relevant income, from such part of the relevant income as is represented by the payment, or that part of the payment, as the case may be, and

(II) any other amount or amounts of tax deducted—

(A) from the relevant profits out of which the relevant payment is made, or

(B) where the payment is less than the profits, from such part of the profits as is represented by the payment,

under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

or

(ii) in the case of an amount of undistributed relevant income, any amount or amounts of tax deducted from the income under any of the provisions of the Acts apart from this section and which is or are not repayable to the collective investment undertaking,

but the amount of the deduction shall not exceed the amount of the sum;

''the Area'' has the same meaning as it has for the purposes of *section 446*;

''chargeable gain'' has the same meaning as in the Capital Gains Tax Acts;

''collective investor'', in relation to an authorised investment company (within the meaning of Part XIII of the Companies Act, 1990), means an investor, being a life assurance company, pension fund or other investor—

(i) who invests in securities or any other property whatever with moneys contributed by 50 or more persons—

(I) none of whom has at any time directly or indirectly contributed more than 5 per cent of such moneys, and

(II) each of a majority of whom has contributed moneys to the investor with the intention of being entitled, otherwise than on the death of any person or by reference to a risk of any kind to any person or property, to receive from the investor—

(A) a payment which, or

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(B) payments the aggregate of which,

exceeds those moneys by a part of the profits or income arising to the investor,

and

(ii) who invests in the authorised investment company primarily for the benefit of those persons;

''collective investment undertaking'' means, subject to *paragraph (b)*—

(i) a unit trust scheme which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and which has not had its authorisation under that Act revoked,

(ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations,

(iii) a limited partnership which—

(I) has as its principal business, as expressed in the partnership agreement establishing the limited partnership, the investment of its funds in property, and

(II) has been authorised to carry on that business, under any enactment which provides for such authorisation, by the Central Bank of Ireland,

and where, in addition to being a collective investment undertaking, it is also a specified collective investment undertaking, and

(iv) any authorised investment company (within the meaning of Part XIII of the Companies Act, 1990)—

(I) which has not had its authorisation under that Part of that Act revoked, and

(II) (A) which has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated, or

(B) (*aa*) which is not a qualified company,

(*bb*) which in addition to being a collective investment undertaking

is also a specified collective investment undertaking, and

(*cc*) where all the holders of units who must be resident outside the State, for the company to be a specified collective investment undertaking, are collective investors;

''distribution'' has the same meaning as in the Corporation Tax Acts;

''qualified company'' has, in relation to any business of a collective investment undertaking carried on in—

(i) the airport, the same meaning as it has for the purposes of *section 445*, or

(ii) the Area, the same meaning as it has for the purposes of *section 446*;

''qualifying management company'', in relation to a collective investment undertaking, means a qualified company which in the course of relevant trading operations carried on by the qualified company manages the whole or any part of the investments and other activities of the business of the undertaking;

''relevant gains'', in relation to a collective investment undertaking, means gains accruing to the undertaking, being gains which would constitute chargeable gains in the hands of a person resident in the State;

''relevant income'', in relation to a collective investment undertaking, means any amounts of income, profits or gains which arise to or are receivable by the collective investment undertaking, being amounts of income, profits or gains—

(i) which are or are to be paid to unit holders as relevant payments,

(ii) out of which relevant payments are or are to be made to unit holders, or

(iii) which are or are to be accumulated for the benefit of, or invested in transferable securities for the benefit of, unit holders,

and which if they arose to an individual resident in the State would in the hands of the individual constitute income for the purposes of income tax;

''relevant payment'' means a payment made to a unit holder by a collective investment undertaking by reason of rights conferred on the unit holder as a result of holding a unit or units in the collective investment undertaking, other than a payment

made in respect of the cancellation, redemption or repurchase of a unit;

''relevant profits'', in relation to a collective investment undertaking, means the relevant income and relevant gains of the undertaking;

''relevant Regulations'' means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

''relevant trading operations'' has, in relation to any business of a collective investment undertaking carried on by a qualified company in—

(i) the airport, the same meaning as it has for the purposes of *section 445*, or

(ii) the Area, the same meaning as it has for the purposes of *section 446*;

''return'' means a return under *paragraph 1(2)* of *Schedule 18*;

''specified collective investment undertaking'' means, subject to *paragraph (c)*, a collective investment undertaking—

(i) most of the business of which, to the extent that it is carried on in the State—

(I) (A) is carried on in the Area by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking, or

(B) is not so carried on in the Area but—

(*aa*) is so carried on in the State,

(*bb*) would be so carried on in the Area but for circumstances outside the control of the person or persons carrying on the business, and

(*cc*) is so carried on in the Area when those circumstances cease to exist,

or

(II) is carried on in the airport by the undertaking or by a qualifying management company of the undertaking or by the undertaking and the qualifying management company of the undertaking,

and

(ii) in which, except to the extent that such units are held by the undertaking itself, the qualifying management company of the undertaking, a company referred to in *section 710(2)*, a specified company or another specified collective investment undertaking, all the holders of units in the undertaking are persons resident outside the State,

and includes any company limited by shares or guarantee which—

(iii) is wholly owned by such a collective investment undertaking or its trustees, if any, for the benefit of the holders of units in that undertaking,

(iv) is so owned solely for the purpose of limiting the liability of that undertaking or its trustees, as the case may be, in respect of futures contracts, options contracts or other financial instruments with similar risk characteristics, by enabling it or its trustees, as the case may be, to invest or deal in such investments through the company, and

(v) would, if references to an undertaking in *paragraph (i)* were to be construed as including references to a company limited by shares or guarantee, satisfy the condition set out in *paragraph (i)*;

''specified company'' means a company—

(i) which is—

(I) a qualified company carrying on relevant trading operations (within the meaning of *section 446*), or

(II) a qualified company carrying on relevant trading operations (within the meaning of *section 445*) so long as those relevant trading operations could be certified by the Minister for Finance as relevant trading operations for the purposes of *section 446* if they were carried on in the Area rather than in the airport,

and

(ii) not more than 25 per cent of the share capital of which is owned directly or indirectly by persons resident in the State;

''tax'' means income tax, corporation tax or capital gains tax, as may be appropriate;

''transferable securities'' has the same meaning as in the relevant Regulations;

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''undistributed relevant income'', in relation to a collective investment undertaking, means any relevant income arising to or receivable by the undertaking in an accounting period of the undertaking and which at the end of the accounting period has not been paid to the unit holders and from which appropriate tax has not previously been deducted;

''unit'' includes any investment, such as a subscription for shares or a contribution of capital, in a collective investment undertaking, being an investment which entitles the investor—

(i) to a share of the investments or relevant profits of, or

(ii) to receive a distribution from,

the collective investment undertaking;

''unit holder'', in relation to a collective investment undertaking, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking.

(*b*) References in this section to a collective investment undertaking, apart from such references in the definition of ''specified collective investment undertaking'', shall include references to a company limited by shares or guarantee which is a specified collective investment undertaking.

(*c*) For the purposes of the definition of ''specified collective investment undertaking'', a reference to a qualifying management company shall be construed as if—

(i) in *section 445(2)* there were deleted '', and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005'', and

(ii) in *section 446(2)* there were deleted '', and any certificate so given shall, unless it is revoked under *subsection (4)*, *(5)* or *(6)*, remain in force until the 31st day of December, 2005''.

(2) For the purposes of this section—

(*a*) where any payment is made out of relevant profits or out of any part of such profits from which any tax including appropriate tax has been deducted and the payment is less than the relevant profits or that part of such profits, the amount of the tax so deducted which is referable to the part of the profits represented by the payment shall be the amount which bears to the total amount of the tax deducted from the relevant profits or the part of such profits, the same proportion as the amount of the payment bears to the amount of the relevant profits or the part of such profits, as the case may be, and

(*b*) any reference in this section to the amount of a relevant payment shall be construed as a reference to the amount which would be the amount of the relevant payment if the appropriate tax were not to be deducted from the relevant payment or from any undistributed relevant income out of which the relevant payment or any part of such payment is made. Pt.27 S.734

(3) Notwithstanding anything in the Acts but subject to *subsection (5)*, a collective investment undertaking shall not be chargeable to tax in respect of relevant profits, but the relevant profits shall be chargeable to tax in the hands of any unit holder, including the undertaking, to whom a relevant payment of or out of the relevant profits is made if and to the extent that the unit holder would be chargeable to tax in the State on such relevant profits, or on such part of the relevant profits as is represented by the payment, on the basis that and in all respects as if, subject to *subsections (4)* and *(6)*, the relevant profits or that part of the relevant profits had arisen or accrued to the unit holder without passing through the hands of the undertaking.

(4) Where in accordance with *subsection (3)* a unit holder is to be charged to tax on a relevant payment made by a collective investment undertaking which is not a specified collective investment undertaking—

(*a*) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant income, the unit holder shall be charged to tax on that amount under Case IV of Schedule D as if it were an amount of income arising to the unit holder at the time the payment is made, and

(*b*) in so far as any amount of the relevant payment on which the unit holder is to be so charged is or is made out of relevant gains, it shall be treated as a capital distribution within the meaning of *section 731* and, if it is not already the case, the Capital Gains Tax Acts shall apply in all respects as if the amount of the relevant payment were a capital distribution made by a unit trust and the unit or units in respect of which it is paid were a unit or units in a unit trust.

(5) (*a*) Where a collective investment undertaking which is not a specified collective investment undertaking—

(i) makes a relevant payment of or out of relevant profits to a unit holder resident in the State, or

(ii) has at the end of an accounting period of the undertaking any undistributed relevant income,

it shall deduct out of the amount of the relevant payment or the amount of the undistributed relevant income, as the case may be, the appropriate tax.

(*b*) Where appropriate tax is deducted in accordance with *paragraph (a)*—

(i) the unit holder to whom the relevant payment is made or the unit holder or unit holders entitled to the relevant income, as the case may be, shall allow the deduction, and

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(ii) the collective investment undertaking shall, on the making of the relevant payment to the unit holder or on the making of any relevant payment out of the undistributed relevant income to any unit holder, as the case may be, be acquitted and discharged of so much money as is represented—

(I) by the deduction, or

(II) where the relevant payment is less than the amount of the undistributed relevant income, by so much of the deduction as is referable to the relevant payment,

as if the amount of money had actually been paid to the unit holder.

(*c*) *Schedule 18* shall apply for the purposes of supplementing this subsection.

(6) (*a*) Where a unit holder receives a relevant payment from a collective investment undertaking which is not a specified collective investment undertaking and appropriate tax has been deducted from the payment, or from the relevant profits or part of those profits out of which the payment is made, then, the unit holder shall—

(i) if the unit holder is not resident in the State for tax purposes at the time the payment is made, be entitled, on due claim and on proof of the facts, to repayment of the appropriate tax, or so much of it as is referable to the relevant payment, as the case may be, or

(ii) in any other case, be entitled—

(I) to have the unit holder's liability to tax under any assessment made in respect of the relevant payment or any part of the relevant payment reduced by a sum equal to so much, if any, of the appropriate tax as is referable to the amount of the relevant payment contained in the assessment, and

(II) where the appropriate tax so referable exceeds the unit holder's liability to tax in respect of the relevant payment, or in respect of that part of the relevant payment contained in the assessment, to repayment of the excess.

(*b*) For the purposes of *paragraph (a)(ii)*, the inspector or on appeal the Appeal Commissioners shall make such apportionment of the appropriate tax deducted from a relevant payment, or from the relevant profits out of which the relevant payment or any part of the relevant payment is made, as is just and reasonable to determine the amount of the appropriate tax, if any, referable to any part of the relevant payment contained in an assessment.

(7) *Section 732* shall not apply as on and from—

(*a*) the 24th day of May, 1989, to—

(i) a qualifying unit trust (within the meaning of *section 732*), and

(ii) the disposal of qualifying units (within the meaning of that section) in such a qualifying unit trust,

where the qualifying unit trust is also a specified collective investment undertaking, and

(*b*) (i) the 6th day of April, 1990, or

(ii) where this section applies by virtue of *subsection (12)(b)* on an earlier day to a qualifying unit trust which is a collective investment undertaking, such earlier day in respect of the qualifying unit trust,

to such a qualifying unit trust or to the disposal of such qualifying units in the qualifying unit trust, where the qualifying unit trust is a collective investment undertaking without also being a specified collective investment undertaking.

(8) *Section 805* shall not apply to a collective investment undertaking if but for this subsection it would otherwise apply.

(9) As respects any collective investment undertaking which is a company (within the meaning of the Corporation Tax Acts)—

(*a*) a relevant payment made out of the relevant profits of the undertaking or a payment made in respect of the cancellation, redemption or repurchase of a unit in the undertaking shall not be treated as a distribution for any of the purposes of the Tax Acts, and

(*b*) if but for this subsection *section 440* would otherwise apply, it shall not apply to the collective investment undertaking.

(10) Notwithstanding *section 1034*, a person not resident in the State shall not by virtue of that section be assessable and chargeable in the name of an agent in respect of a relevant payment made out of the relevant profits of a collective investment undertaking.

(11) For the purposes of the Tax Acts, a unit holder other than a qualifying management company shall not be treated as carrying on a trade in the State through a branch or agency or otherwise where that unit holder would not be so treated if the unit holder did not hold any units in a specified collective investment undertaking.

(12) This section shall apply as on and from—

(*a*) in the case of a specified collective investment undertaking, the 24th day of May, 1989, and

(*b*) in the case of any other collective investment undertaking, the 6th day of April, 1990, or such earlier day, not being earlier than the 6th day of April, 1989, as the Revenue Commissioners may agree to in writing with any such other collective investment undertaking in respect of that undertaking.

Pt.27
Certain unit trusts not to be collective investment undertakings.

[FA90 s35(1) and(2)]

735.—(1) This section shall apply to any unit trust scheme (within the meaning of the Unit Trusts Act, 1972) where there is or was at any time in respect of any or all units issued after the 14th day of June, 1973, a requirement for participation in that unit trust scheme that a policy of assurance on human life be effected (but without those units becoming the property of the owner of the policy either as benefits or otherwise).

(2) Notwithstanding *section 734*, a unit trust scheme to which this section applies shall be deemed not to be a collective investment undertaking for the purposes of that section and *Schedule 18*.

Option for non-application of *section 735*.

[FA92 s36]

736.—(1) Where the trustees of a unit trust scheme (within the meaning the Unit Trusts Act, 1990), which apart from *section 735* would be a collective investment undertaking for the purposes of *section 734* and *Schedule 18*, have not later than the 1st day of November, 1992—

(*a*) paid the capital gains tax which would have been chargeable on them if—

(i) on the 31st day of March, 1992, they had disposed of all the assets of the unit trust scheme, and

(ii) the resulting chargeable gains were chargeable to tax at one-half of the rate at which they would have been chargeable under the Capital Gains Tax Acts apart from this subparagraph,

and

(*b*) given notice in writing to the Revenue Commissioners that they have paid that tax in accordance with *paragraph (a)*,

then, notwithstanding *section 735*, the unit trust scheme (in this section referred to as ''the relevant unit trust'') shall be deemed to be and to have been a collective investment undertaking for the purposes of *section 734* and *Schedule 18* with effect from the 1st day of April, 1992.

(2) (*a*) Where units in a relevant unit trust were held by a person on the 31st day of March, 1992, they shall be treated, for the purposes of computing chargeable gains accruing to the person on or after the 1st day of April, 1992, as having been acquired by the person on the 31st day of March, 1992.

(*b*) *Section 731(6)* shall not apply to disposals on or after the 1st day of April, 1992, of units in a relevant unit trust.

(3) Where the consideration received for a disposal, or given for an acquisition, of an asset on the 31st day of March, 1992, is to be determined as a result of this section, it shall be deemed to be an amount equal to the market value of the asset on that day, and for this purpose ''market value'', in relation to any asset, shall be construed in accordance with *section 548*.

Special investment schemes.

[FA93 s13; FA94 s34(a); FA96 s36]

737.—(1) (*a*) In this section—

''inspector'', ''ordinary shares'', and ''qualifying shares'' have the same meanings respectively as in *section 723*;

''authorised unit trust scheme'' means a unit trust scheme which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and which has not had its authorisation under that Act revoked;

''market value'' shall be construed in accordance with *section 548*;

''special investment scheme'' means an authorised unit trust scheme in respect of which the conditions specified in *subsection (2)* are satisfied;

''special investment units'' means units sold to an individual on or after the 1st day of February, 1993, by the management company or trustee under an authorised unit trust scheme in respect of which—

(*a*) the conditions specified in *subsection (3)* are satisfied, and

(*b*) a declaration of the kind specified in *subsection (4)* has been made to the management company or trustee;

''specified qualifying shares'', in relation to a special investment scheme, means qualifying shares in a company which, when the shares are acquired for the scheme, has an issued share capital the market value of which is less than £100,000,000;

''units'', in relation to an authorised unit trust scheme, means any units (whether described as units or otherwise) into which are divided the beneficial interests in the assets subject to any trust created under the scheme.

(*b*) A reference in this section to the management company or trustee under an authorised unit trust scheme shall be construed as a reference to the person in whom are vested the powers of management relating to property for the time being subject to any trust created pursuant to the scheme or, as the case may be, to the person in whom such property is or may be vested in accordance with the terms of the trust.

(2) (*a*) The conditions referred to in the definition of ''special investment scheme'' are as follows:

(i) the beneficial interests in the assets subject to any trust created under the authorised unit trust scheme concerned shall be divided into special investment units;

(ii) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets subject to any trust created under the scheme shall not be less than—

(I) as respects qualifying shares, 40 per cent, and

(II) as respects specified qualifying shares, 6 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

(iii) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets subject to any trust created under the scheme shall not be less than—

(I) as respects qualifying shares, 45 per cent, and

(II) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

(iv) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets subject to any trust created under the scheme shall not be less than—

(I) as respects qualifying shares, 50 per cent, and

(II) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust;

(v) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets subject to any trust created under the scheme shall not be less than—

(I) as respects qualifying shares, 55 per cent, and

(II) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets which are at that time subject to any such trust.

(*b*) For the purposes of *subparagraphs (ii)* to *(v)* of *paragraph (a)*, the amount of the consideration given for assets subject to any trust created under the scheme shall be determined in accordance with *sections 547* and *580*.

(3) (*a*) The conditions referred to in the definition of ''special investment units'' are as follows:

(i) the special investment units shall be so designated in the trusts created under the authorised unit trust scheme concerned;

(ii) the aggregate of payments made on or before any day to the management company or trustee under the scheme by or on behalf of an individual in respect of special investment units owned, whether jointly or otherwise, by the individual on that day shall not exceed £50,000;

(iii) the management company or trustee under the scheme shall ensure that the aggregate of the market value of special investment units owned, whether jointly or otherwise, by any individual does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first payment was made by or on behalf of that individual in respect of those units;

(iv) special investment units shall not be sold to or owned by an individual who is not of full age;

(v) special investment units shall only be sold to an individual—

(I) who shall be beneficially entitled to, and

(II) to whom there shall be paid,

all amounts payable in respect of those units by the management company or trustee under the scheme;

(vi) except in the case of special investment units sold to and owned jointly only by a couple married to each other, units shall not be jointly owned;

(vii) except in the case of special investment units bought by and owned jointly only by a couple married to each other, an individual who owns such units of an authorised unit trust scheme shall not buy or own such units of another authorised unit trust scheme;

(viii) where a couple married to each other buy and jointly own special investment units of an authorised unit trust scheme, they shall not buy or own such units in any other such scheme either individually or jointly, other than units which they buy and jointly own in one other such scheme.

(*b*) For the purposes of *subparagraphs (ii)* to *(iv)* and *(vi)* to *(viii)* of *paragraph (a)*, references to ownership of special investment units shall be construed as references to beneficial ownership of the units.

(*c*) For the purposes of *subparagraphs (ii)* and *(iii)* of *paragraph (a)*, a disposal of special investment units of an authorised unit trust scheme acquired by an individual at different times shall be assumed to be a disposal of units acquired later, rather than of units acquired earlier, by the individual.

(4) The declaration referred to in the definition of ''special investment units'' is a declaration in writing to the management company or trustee under an authorised unit trust scheme which—

(*a*) (i) is made by the individual (in this section referred to as ''the declarer'') to whom any amounts are payable by the management company or trustee in respect of units in respect of which the declaration is made, and

(ii) is signed by the declarer,

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(*b*) is made in such form as may be prescribed or authorised by the Revenue Commissioners,

(*c*) declares that at the time when the declaration is made the conditions specified in *subparagraphs (iv)* to *(viii)* of *subsection (3)(a)* are satisfied in relation to the units in respect of which the declaration is made,

(*d*) contains the full name and address of the individual beneficially entitled to any amounts payable in respect of the units in respect of which the declaration is made,

(*e*) contains an undertaking by the declarer that, if any of the conditions referred to in *subparagraphs (iv)* to *(viii)* of *subsection (3)(a)* ceases to be satisfied in respect of the units in respect of which the declaration is made, the declarer will notify the management company or trustee accordingly, and

(*f*) contains such other information as the Revenue Commissioners may reasonably require for the purposes of this section.

(5) (*a*) The management company or trustee under an authorised unit trust scheme shall—

(i) keep and retain for not less than the longer of the following periods—

(I) a period of 6 years, and

(II) a period which, in relation to the units in respect of which the declaration is made, ends 3 years after the earliest date on which all of those units stand cancelled, redeemed or bought by the management company or trustee, and

(ii) on being so required by notice given to it in writing by an inspector, make available to the inspector within the time specified in the notice,

all declarations of the kind specified in *subsection (4)* which have been made to it.

(*b*) The inspector may examine and take copies of or of extracts from a declaration made available to him or her under *paragraph (a)*.

(6) (*a*) Notwithstanding *section 734*, a special investment scheme shall not be a collective investment undertaking for the purposes of that section and *Schedule 18*; but a special investment scheme shall continue to be treated as a collective investment undertaking (within the meaning of *section 734*) for the purposes of section 206(*a*) of the Finance Act, 1992.

(*b*) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts but subject to *paragraphs (c)* and *(d)*—

(i) income tax in respect of income arising to a special investment scheme shall be chargeable at the standard rate, and such income shall not be charged to

an additional duty of income tax under *section 805*, PT.27 S.737 and

(ii) capital gains tax in respect of chargeable gains accruing to a special investment scheme shall be chargeable at the rate specified in *section 28(3)*.

(*c*) Any income tax or capital gains tax chargeable in accordance with *paragraph (b)* shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under the Tax Acts or the Capital Gains Tax Acts apart from this section, is 10 per cent of income arising or chargeable gains accruing, as the case may be, to the scheme.

(*d*) Only so much of income arising or gains accruing to the scheme shall be chargeable to income tax or capital gains tax, as the case may be, in accordance with *paragraph (b)* as is or is to be—

(i) paid to, or

(ii) accumulated or invested for the benefit of,

holders of special investment units or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of *subsection (8)* were gains on an actual disposal of the assets concerned.

(7) (*a*) Notwithstanding *section 136(5)*, a distribution made by a company resident in the State in respect of shares which are subject to any trust created in pursuance of a special investment scheme shall be treated for the purposes of the Tax Acts as income in respect of which the management company or trustee under the scheme is entitled to a tax credit, and no other person shall be treated for the purposes of *section 136* as receiving that distribution.

(*b*) Where a management company or trustee under a special investment scheme is entitled to a tax credit in respect of a distribution made by a company resident in the State, the credit or part of it shall be set against—

(i) the income tax, as reduced by virtue of *subsection (6)(c),* chargeable in respect of income arising to, or

(ii) the capital gains tax, as so reduced, chargeable in respect of chargeable gains accruing to,

the special investment scheme for the year of assessment in which the distribution is made and, where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the management company or trustee under the scheme.

(*c*) Notwithstanding *Chapter 4* of *Part 8*, that Chapter shall apply to a deposit (within the meaning of that Chapter) for the time being subject to any trust created pursuant to a special investment scheme as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

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(8) (*a*) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains arising to a special investment scheme—

(i) each asset which on the 5th day of April is subject to any trust created pursuant to the scheme shall be deemed to have been disposed of and immediately reacquired by the management company or trustee under the scheme on that day at the asset's market value on that day,

(ii) *section 556* shall not apply,

(iii) *section 607* shall not apply,

(iv) without prejudice to the treatment of losses on such shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares (within the meaning of *Part 16*) in a qualifying company (within the meaning of that Part) shall not be chargeable gains, and

(v) as respects *section 581*—

(I) *subsections (1)* and *(2)* of that section, and

(II) *subsection (3)* of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

shall apply as if *subparagraphs (i)* and *(iii)* had not been enacted.

(*b*) Where in a year of assessment the management company or trustee under a special investment scheme incurs allowable losses on disposals or deemed disposals of assets subject to any trust created pursuant to the scheme, the amount, if any, by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the year of assessment shall be—

(i) disregarded for the purposes of *section 31*,

(ii) treated as reducing the income chargeable to income tax arising to the scheme in that year of assessment, and

(iii) to the extent that it is not treated as reducing income arising to the scheme in that year of assessment, treated for the purposes of the Capital Gains Tax Acts and this paragraph as an allowable loss incurred in the next year of assessment on a disposal of an asset subject to a trust created pursuant to the scheme.

(*c*) (i) In this paragraph—

''the appropriate amount in respect of the interest'' means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the management company or the trustee was the first buyer and the management company or the trustee carried on a trade to which

section 749(1) applies but, in determining the appropriate amount in respect of the interest in accordance with *Schedule 21*, *paragraph 3(4)* of that Schedule shall apply as if ''in the opinion of the Appeal Commissioners'' were deleted;

''securities'' has the same meaning as in *section 815*.

(ii) Where in a year of assessment (in this paragraph referred to as ''the first year of assessment'') any securities which are assets subject to any trust created pursuant to a special investment scheme are disposed of and in the following year of assessment interest becoming payable in respect of the securities is receivable by the special investment scheme, then, for the purposes of computing the chargeable gains for the first year of assessment, the price paid by the management company or the trustee for the securities shall be treated as reduced by the appropriate amount in respect of the interest.

(iii) Where for a year of assessment *subparagraph (ii)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following year of assessment from the disposal of the securities.

(9) (*a*) In this subsection, ''eligible shares'' means eligible shares within the meaning of *Part 16* in a qualifying company within the meaning of that Part.

(*b*) Distributions received by the management company or trustee under a special investment scheme in respect of eligible shares which are subject to any trust created in pursuance of the scheme shall not be chargeable to income tax; but, notwithstanding *subsection (7)* or *section 136*, the tax credit in respect of a distribution to which this paragraph applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.

(*c*) Notwithstanding *section 508*, the Revenue Commissioners shall not designate a special investment scheme for the purposes of *Part 16*.

(10) (*a*) Any payment made to a holder of special investment units by the management company or trustee under the special investment scheme concerned by reason of rights conferred on the holder as a result of holding such units shall not be reckoned in computing total income for the purposes of the Income Tax Acts.

(*b*) *Section 732* shall not apply to a special investment scheme or the disposal of special investment units.

(*c*) No chargeable gain shall accrue on the disposal of, or of an interest in, special investment units.

(*d*) Notwithstanding any other provision of the Income Tax Acts or the Capital Gains Tax Acts, the holder of special investment units of a special investment scheme shall not be entitled to any credit for or payment of any income

tax or capital gains tax paid in respect of income arising to, or capital gains accruing to, the scheme.

Undertakings for collective investment.

[FA93 s17; FA94 s57(a); FA96 s38(1); FA97 s35]

738.—(1) (*a*) In this section and in *section 739*—

''chargeable period'' means an accounting period of an undertaking for collective investment which is a company or, as respects such an undertaking which is not a company, a year of assessment;

''designated assets'' means—

(i) land, or

(ii) shares in a company resident in the State which are not shares—

(I) listed in the official list, or

(II) dealt in on the smaller companies market or the unlisted securities market,

of the Irish Stock Exchange;

''designated undertaking for collective investment'' means an undertaking for collective investment which, on the 25th day of May, 1993, owned designated assets for which that undertaking gave consideration (determined in accordance with *section 547*) the aggregate of which is not less than 80 per cent of the aggregate of the consideration (as so determined) which that undertaking gave for the total assets it owned at that date;

''distribution'' has the same meaning as in the Corporation Tax Acts;

''guaranteed undertaking for collective investment'' means an undertaking for collective investment all of the issued units of which, on the 25th day of May, 1993, are units in respect of each of which the undertaking will make one payment only, being a payment—

(i) to be made on a specified date in cancellation of those units, and

(ii) which is the aggregate of—

(I) a fixed amount, and

(II) an amount, which may be nil, determined by a stock exchange index or indices;

''relevant Regulations'' means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989);

''undertaking for collective investment'' means, subject to *paragraph (b)*—

(i) a unit trust scheme, other than—

(I) a unit trust mentioned in *section 731(5)(a)*, or

(II) a special investment scheme (within the meaning of *section 737*),

which is or is deemed to be an authorised unit trust scheme (within the meaning of the Unit Trusts Act, 1990) and has not had its authorisation under that Act revoked,

(ii) any other undertaking which is an undertaking for collective investment in transferable securities within the meaning of the relevant Regulations, being an undertaking which holds an authorisation, which has not been revoked, issued pursuant to the relevant Regulations, or

(iii) any authorised investment company (within the meaning of Part XIII of the Companies Act, 1990) which—

(I) has not had its authorisation under that Part of that Act revoked, and

(II) has been designated in that authorisation as an investment company which may raise capital by promoting the sale of its shares to the public and has not ceased to be so designated,

which is neither a specified collective investment undertaking (within the meaning of *section 734(1)*) nor an offshore fund (within the meaning of *section 743*);

''unit'' includes a share and any other instrument granting an entitlement—

(i) to a share of the investments or relevant profits of, or

(ii) to receive a distribution from,

an undertaking for collective investment;

''unit holder'', in relation to an undertaking for collective investment, means any person who by reason of the holding of a unit, or under the terms of a unit, in the undertaking is entitled to a share of any of the investments or relevant profits of, or to receive a distribution from, the undertaking;

''standard rate'' has the same meaning as in *section 3(1)*;

''standard rate per cent'' has the same meaning as in *section 4(1)*.

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(*b*) For the purposes of this section and *section 739*, references to an undertaking for collective investment (other than in this paragraph) shall be construed so as to include a reference to a trustee, management company or other such person who—

(i) is authorised to act on behalf, or for the purposes, of the undertaking, and

(ii) habitually does so,

to the extent that such construction brings into account for the purposes of this section and *section 739* any matter relating to the undertaking, being a matter which would not otherwise be brought into account for those purposes.

(*c*) For the purposes of this section—

(i) as respects an undertaking for collective investment which is a company, where an accounting period of the company begins before the 6th day of April, 1994, and ends on or after that day, it shall be divided into 2 parts, one beginning on the day on which the accounting period begins and ending on the 5th day of April, 1994, and the other beginning on the 6th day of April, 1994, and ending on the day on which the accounting period ends, and both parts shall be treated as if they were separate accounting periods of the company, and

(ii) without prejudice to *section 815(2)*, any attribution of income or chargeable gains of such an undertaking to periods treated as separate accounting periods by virtue of *subparagraph (i)* shall be made—

(I) as respects such income, on the basis of the time that income arises to the undertaking, and

(II) as respects such capital gains, on the basis of the time of disposal of the assets concerned,

and *section 4(6)* shall not apply for the purpose of such attribution.

(2) (*a*) Other than in the case of *subsections (7)* to *(9)* of *section 734*, that section shall not apply, and the following provisions of this section shall apply, to an undertaking for collective investment as respects the chargeable periods of the undertaking ending on or after—

(i) the 6th day of April, 1994, if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, or

(ii) the 25th day of May, 1993, if the undertaking was not carrying on such a business at that date.

(*b*) (i) As respects an undertaking for collective investment which is a company, the corporation tax which is chargeable on its profits on which corporation tax falls finally to be borne for a chargeable period shall be reduced for the purposes of the Tax Acts so that, before it is reduced by any credit, relief or other reduction under those Acts (other than under this section), it is the standard rate, for the year of assessment in which the chargeable period falls, of those profits.

(ii) For the purposes of this paragraph, where part of the chargeable period falls in one year of assessment (in this subparagraph referred to as ''the first-mentioned year'') and the other part falls in the year of assessment succeeding the first-mentioned year and different standard rates are in force for each of those years, ''the standard rate'' shall be deemed to be a rate per cent determined by the formula—

$$\frac{(A \times C)}{E} + \frac{(B \times D)}{E}$$

where—

A is the standard rate per cent in force for the first-mentioned year,

B is the standard rate per cent in force for the year of assessment succeeding the first-mentioned year,

C is the length of that part of the chargeable period falling in the first-mentioned year,

D is the length of that part of the chargeable period falling in the year of assessment succeeding the first-mentioned year, and

E is the length of the chargeable period.

(*c*) In computing profits for the purposes of *paragraph (b)*, *section 78(2)* shall apply as if the rate per cent of capital gains tax specified in *section 28(3)*, were the rate per cent of corporation tax specified in *section 21(1)(b)*.

(*d*) As respects an undertaking for collective investment which is not a company—

(i) the capital gains tax which is chargeable on the chargeable gains accruing in a year of assessment to the undertaking shall be reduced so that the amount of such tax, before it is reduced by any credit, relief or other deduction under any provision, other than under this section, of the Tax Acts or the Capital Gains Tax Acts, is the standard rate, for the year of assessment, of the chargeable gains accruing to the undertaking, and

(ii) only so much of income arising or gains accruing to the undertaking shall be chargeable to income tax or capital gains tax, as the case may be, as is or is to be—

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(I) paid to, or

(II) accumulated or invested for the benefit of,

unit holders in the undertaking or as would be so paid, accumulated or invested if any gains accruing to the scheme by virtue of *subsection (4)* were gains on an actual disposal of the assets concerned.

(3) (*a*) (i) *Section 129* shall not apply as respects a distribution received by an undertaking for collective investment which is a company, and the income represented by the distribution shall be equal to the aggregate of the distribution and the amount of the tax credit in respect of the distribution.

(ii) Where an undertaking for collective investment which is a company is entitled to a tax credit in respect of a distribution which is chargeable to corporation tax by virtue of *subparagraph (i)*—

(I) it may set the credit against the corporation tax, as reduced by virtue of *subsection (2)(b),* chargeable on its profits for the chargeable period in which the distribution is made and where the credit exceeds that corporation tax the excess shall be paid to it, and

(II) notwithstanding *sections 4* and *156*, the income represented by the distribution shall not be franked investment income for the purposes of *sections 83* and *157*.

(*b*) Where a company resident in the State makes a distribution to an undertaking for collective investment which is not a company, the tax credit, if any, attaching to the distribution shall be set against—

(i) the income tax chargeable in respect of income arising to, or

(ii) the capital gains tax, as reduced by *subsection (2)(d)(i)*, chargeable in respect of chargeable gains accruing to,

the undertaking for the year of assessment in which the distribution is made, and—

(I) where the credit exceeds the aggregate of that income tax and capital gains tax, the excess shall be paid to the undertaking, and

(II) a payment shall not be made in respect of the credit under *section 136(4)*.

(*c*) Notwithstanding *Chapter 4* of *Part 8*, that Chapter shall apply to a deposit (within the meaning of that Chapter) which is for the time being beneficially owned by an undertaking for collective investment which is not a company as if such a deposit were not a relevant deposit (within the meaning of that Chapter).

(4) (*a*) (i) Every asset of an undertaking for collective investment on the day on which a chargeable period of the undertaking ends shall, subject to *subparagraph (ii)* and *paragraphs (b)* to *(e)*, be deemed to have been disposed of and immediately reacquired by the undertaking at the asset's market value on that day.

(ii) *Subparagraph (i)* shall not apply to—

(I) assets to which *section 607* applies other than where such assets are held in connection with a contract or other arrangement which secures the future exchange of the assets for other assets to which that section does not apply, and

(II) assets which are strips within the meaning of *section 55*.

(*b*) Subject to *paragraphs (c)* and *(d)*, chargeable gains or allowable losses, which would otherwise accrue to an undertaking for collective investment on disposals deemed by virtue of *paragraph (a)* to have been made in a chargeable period (other than a period in which the collective investment business of the undertaking concerned ceases) of the undertaking, shall be treated, subject to *subparagraphs (ii)* and *(iii),* as not accruing to it, and instead—

(i) there shall be ascertained the difference (in this subsection referred to as ''the net amount'') between the aggregate of those gains and the aggregate of those losses,

(ii) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the undertaking on disposals of assets deemed to be made in the chargeable period, and

(iii) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing on disposals of assets deemed to be made in each succeeding chargeable period until the whole amount has been accounted for.

(*c*) For any chargeable period of less than one year, the fraction of one-seventh referred to in *paragraph (b)(iii)* shall be proportionately reduced and, where this paragraph has applied in relation to any chargeable period before the last such period for which *paragraph (b)(iii)* applies, the fraction treated as accruing in that last chargeable period shall be reduced so as to secure that no more than the whole of the net amount has been accounted for.

(*d*) Where the collective investment business of the undertaking concerned ceases before the beginning of the last of the chargeable periods for which *paragraph (b)(iii)* would apply in relation to a net amount, the fraction of that amount that is treated as accruing in the chargeable period in which the business ceases shall be such as to secure that the whole of the net amount has been accounted for.

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(*e*) Where in a chargeable period an undertaking for collective investment incurs a loss on the disposal (in this paragraph referred to as ''the first-mentioned disposal'') of an asset the gain or loss in respect of a deemed disposal of which was included in a net amount to which *paragraph (b)(ii)* applied for any preceding chargeable period, so much of the allowable loss on the first-mentioned disposal as is equal to the excess of the amount of the loss over the amount which but for *paragraph (a)* would have been the allowable loss on the first-mentioned disposal shall be treated for the purposes of *paragraph (b)* as an allowable loss which would otherwise accrue to the undertaking for collective investment on disposals deemed by virtue of *paragraph (a)* to have been made in the chargeable period.

(5) Notwithstanding the Capital Gains Tax Acts, for the purposes of computing chargeable gains accruing to an undertaking for collective investment—

(*a*) (i) *section 556*, and

(ii) *section 607*,

shall not apply,

(*b*) *section 581* shall as respects—

(i) *subsections (1)* and *(2)* of that section, and

(ii) *subsection (3)* of that section, in so far as a chargeable gain is not thereby disregarded for the purposes of that subsection,

apply as if *subsection (4)*, *paragraph (a)(ii)* and *paragraph (c)* had not been enacted, and

(*c*) if the undertaking was carrying on a collective investment business on the 25th day of May, 1993, it shall be deemed to have acquired each of the assets it holds on the 5th day of April, 1994, apart from assets to which *section 607* applies, at the asset's market value on that date.

(6) Subject to *subsection (4)(b)*, where an undertaking for collective investment incurs allowable losses on disposals or deemed disposals of assets in a chargeable period, the amount (if any) by which the aggregate of such allowable losses exceeds the aggregate of chargeable gains on such disposals in the chargeable period shall—

(*a*) be disregarded for the purposes of *section 31*,

(*b*) be treated as reducing the income chargeable to income tax or corporation tax arising to the undertaking in that chargeable period, and

(*c*) to the extent that it is not treated as reducing income arising to the undertaking in that chargeable period, be treated for the purposes of the Capital Gains Tax Acts and this subsection as an allowable loss incurred on a disposal of an asset deemed to be made in the next chargeable period.

(7) (*a*) In this subsection—

"the appropriate amount in respect of the interest" means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the undertaking for collective investment was the first buyer and it carried on a trade to which *section 749(1)* applies but, in determining the appropriate amount in respect of the interest in accordance with *Schedule 21*, *paragraph 3(4)* of that Schedule shall apply as if "in the opinion of the Appeal Commissioners" were deleted;

"securities" has the same meaning as in *section 815*.

(*b*) Where in a chargeable period an undertaking for collective investment disposes of any securities and in the following chargeable period or its basis period interest becoming payable in respect of the securities is receivable by the undertaking for collective investment, then, the gain or loss accruing on the disposal shall be computed as if the price paid by the undertaking for collective investment for the securities was reduced by the appropriate amount in respect of the interest.

(*c*) Where for a chargeable period *paragraph (b)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following chargeable period from the disposal of the securities.

(8) Notwithstanding any provision of the Tax Acts or the Capital Gains Tax Acts other than *section 739*, unit holders in an undertaking for collective investment shall not be entitled to any credit for or repayment of any income tax, capital gains tax or corporation tax paid in respect of income arising to, capital gains accruing to or profits of the undertaking.

(9) (*a*) Notwithstanding *subsection (2)* but subject to *paragraph (b)*, *subsections (1)* to *(8)* and *section 739* shall be construed as respects designated undertakings for collective investment and guaranteed undertakings for collective investment as if every reference in those subsections and in that section—

(i) to the 5th day of April, 1994, were a reference to the 5th day of April, 1998, and

(ii) to the 6th day of April, 1994, were a reference to the 6th day of April, 1998,

and, as respects such an undertaking, those subsections and *section 739* shall not apply except as so construed.

(*b*) Where—

(i) the aggregate of the consideration (determined in accordance with *section 547*) given for the designated assets owned at any time after the 25th day of May, 1993, and before the 5th day of April, 1997, by a designated undertaking for collective investment is less than 80 per cent of the aggregate of the consideration (as so determined) given for the total assets owned by the undertaking at that time, or

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(ii) at any time before the 5th day of April, 1997, a guaranteed undertaking for collective investment makes any payment to unit holders in the undertaking which is not a payment in cancellation of those units,

paragraph (a) shall be construed as respects that undertaking as if each reference in that paragraph—

(I) to the 5th day of April, 1998, were a reference to the 5th day of April, and

(II) to the 6th day of April, 1998, were a reference to the 6th day of April,

subsequent to the time referred to in *subparagraph (i)* or *(ii)*, as the case may be.

Taxation of unit holders in undertakings for collective investment.

[FA93 s18; FA94 s57(b)]

739.—(1) Subject to this section, as respects a payment made on or after the 6th day of April, 1994, in money or money's worth to a unit holder by reason of rights conferred on the holder as a result of holding units in an undertaking for collective investment—

(*a*) where the holder is not a company, the payment shall not be reckoned in computing the total income of the holder for the purposes of the Income Tax Acts, and

(*b*) where apart from this paragraph the payment would be taken into account for the purposes of computing income chargeable to corporation tax, such payment shall be treated as if it were the net amount of an annual payment chargeable to tax under Case IV of Schedule D from the gross amount of which income tax has been deducted at the standard rate.

(2) (*a*) This subsection shall apply to a payment which—

(i) is made on or after the 6th day of April, 1994, in money or money's worth, by reason of rights conferred on a unit holder as a result of holding units in an undertaking for collective investment, and

(ii) apart from *subsection (1)* would be charged to corporation tax under Case I of Schedule D.

(*b*) *Subsection (1)* shall not apply to a payment to which this subsection applies.

(*c*) For the purposes of the Tax Acts other than *paragraphs (d)* and *(e)*—

(i) the income for a chargeable period attributable to a payment to which this subsection applies shall be increased by an amount determined by reference to *paragraph (d)*, and

(ii) the amount so determined shall be deemed to be an amount of income tax which shall—

(I) be set off against corporation tax assessable on the unit holder for the chargeable period, or

(II) in so far as it cannot be set off in accordance with *clause (I)*, be repaid to the unit holder. Pt.27 S.739

(*d*) The amount referred to in *paragraph (c)*, by which the income attributable to a payment to which this subsection applies is to be increased, shall be determined by the formula—

$$I \times \frac{A}{100 - A}$$

where—

I is the income attributable to a payment to which this subsection applies, and

A is the standard rate per cent for the year of assessment in which the payment is made.

(*e*) For the purposes of this subsection, in computing income attributable to a payment—

(i) an amount shall be deducted from the payment if the payment arises on a sale or other transfer of ownership, or on a cancellation, redemption or repurchase by the undertaking for collective investment, of units or an interest in units, and an amount shall not be deducted otherwise,

(ii) subject to *subparagraphs (iii)* to *(v)*, the amount of the consideration in money or money's worth given by or on behalf of the unit holder for the acquisition of units or an interest in units for which the payment is made, and not any other amount, shall be deducted from the payment,

(iii) where units are acquired by the unit holder before the 6th day of April, 1994, in an undertaking for collective investment carrying on business on the 25th day of May, 1993, the consideration for the acquisition of the units shall be deemed to be the amount of their market value (within the meaning of *section 548*) on the 6th day of April, 1994, if that amount is greater than the consideration given, or deemed by virtue of *subparagraph (iv)* to be given, by the unit holder for their acquisition,

(iv) where units are acquired by a unit holder for a consideration which is less than the market value (within the meaning of *section 548*) of the units on the day the unit holder acquired them, the consideration given by the unit holder for those units shall be deemed to be that market value, and

(v) the amount of consideration given for units shall be determined in accordance with *section 580*.

(3) (*a*) Subject to *paragraph (b)* and *subsections (5)* and *(6)*, as respects a disposal on or after the 6th day of April, 1994, of units in an undertaking for collective investment by a person other than a company—

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(i) no chargeable gain shall accrue on the disposal if the person disposing of the units acquired them on or after that date, and

(ii) if the person disposing of the units acquired them before that date, the chargeable gains on the disposal shall be computed as if—

(I) the consideration for the disposal were the market value of the units on the 5th day of April, 1994, and

(II) for the purposes of selecting the appropriate multiplier (within the meaning of *section 556*) and of applying *paragraph 25* of *Schedule 32* the disposal were made in the year 1993-94,

and for the purposes of this subsection and *subsection (4)* references to units shall be construed as including a reference to an interest in units, and accordingly this subsection and *subsection (4)* shall apply with any necessary modifications.

(*b*) *Clause (I)* of *paragraph (a)(ii)* shall not apply in relation to the disposal of units if as a consequence of the application of that clause—

(i) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or loss would so accrue if that clause did not apply, or

(ii) a loss would so accrue and either a smaller loss or a gain would accrue if that clause did not apply,

and accordingly, in a case to which *subparagraph (i)* or *(ii)* applies, the amount of the gain or loss accruing on the disposal shall be computed without regard to *clause (I)* of *paragraph (a)(ii)* but, in a case where this paragraph would otherwise substitute a loss for a gain or a gain for a loss, it shall be assumed in relation to the disposal that the units were acquired by the person disposing of them for a consideration such that neither a gain nor a loss accrued to that person on making the disposal.

(4) (*a*) Subject to *paragraph (b)* and *subsections (5)* and *(6)*, as respects a disposal by a company on or after the 6th day of April, 1994, of units in an undertaking for collective investment, for the purposes of the Corporation Tax Acts—

(i) any chargeable gain accruing on the disposal shall, notwithstanding *section 21(3)*, be treated as if it were the net amount of a gain from the gross amount of which capital gains tax has been deducted at the standard rate of income tax,

(ii) the amount to be taken into account in respect of the chargeable gain in computing in accordance with *section 78* the company's chargeable gains for the accounting period in which the company disposes of the units shall be the gross amount of the chargeable gain, and

(iii) the capital gains tax treated as deducted from the gross amount of the chargeable gain shall—

(I) be set off against the corporation tax assessable on the company for the accounting period, or

(II) in so far as it cannot be set off in accordance with *clause (I)*, be repaid to the company.

(*b*) As respects a disposal by a company of units which it acquired before the 6th day of April, 1994, in an undertaking for collective investment carrying on business on the 25th day of May, 1993, *paragraph (a)* shall apply only to so much of the chargeable gain accruing to the company on that disposal of units as does not exceed the chargeable gain which would have accrued on that disposal had the company sold and immediately reacquired those units on the 5th day of April, 1994, at their market value on that day.

(*c*) This subsection shall be disregarded for the purposes of *section 546(2)*.

(5) (*a*) Where a person (in this subsection referred to as ''the disponer'') disposing of units in an undertaking for collective investment acquired them—

(i) on or after the 6th day of April, 1994, and

(ii) in such circumstances that by virtue of any enactment other than *section 556(4)* the disponer and the person from whom the disponer acquired them (in this subsection referred to as ''the previous owner'') were to be treated for the purposes of the Capital Gains Tax Acts as if the disponer's acquisition were for a consideration of such an amount as would secure that, on the disposal under which the disponer acquired them, neither a gain nor a loss accrued to the previous owner,

then, the previous owner's acquisition of the interest shall be treated as the disponer's acquisition of the interest.

(*b*) Where the previous owner acquired the units disposed of on or after the 6th day of April, 1994, and in circumstances similar to those referred to in *paragraph (a)*, the acquisition of the units by the previous owner's predecessor shall be treated for the purposes of this section as the previous owner's acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before the 6th day of April, 1994, or, as the case may be, until an acquisition on a disposal on or after that date.

(6) Where an undertaking for collective investment was not carrying on a collective investment business on the 25th day of May, 1993, this section shall apply as respects payments by, or disposals of units in, that undertaking as if—

(*a*) ''on or after the 6th day of April, 1994,'' were deleted from *subsections (1)*, *(2)*, *(3)* and *(4)*, and

(*b*) *paragraphs (a)(ii)* and *(b)* were deleted from *subsection (3)*.

CHAPTER 2

Offshore funds

Interpretation (*Chapter 2* and *Schedules 19* and *20*).

[FA90 s62]

740.—In this Chapter and in *Schedules 19* and *20*—

''account period'' shall be construed in accordance with *subsections (8)* to *(10)* of *section 744*;

''disposal'' shall be construed in accordance with *section 741(2)*;

''distributing fund'' shall be construed in accordance with *subsections (2)* and *(3)* of *section 744*;

''the equalisation account'' has the meaning assigned to it by *section 742(1)*;

''Irish equivalent profits'' has the meaning assigned to it by *paragraph 5* of *Schedule 19*;

''material interest'' shall be construed in accordance with *section 743(2)*;

''non-qualifying fund'' has the meaning assigned to it by *section 744(1)*;

''offshore fund'' has the meaning assigned to it by *section 743(1)*;

''offshore income gain'' shall be construed in accordance with *paragraphs 5* and *6(1)* of *Schedule 20*.

Disposals of material interests in non-qualifying offshore funds.

[FA90 s63]

741.—(1) This Chapter shall apply to a disposal by any person of an asset if at the time of the disposal—

(*a*) the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund, or

(*b*) the asset constitutes an interest in a company resident in the State or in a unit trust scheme, the trustees of which are at that time resident in the State and at a material time on or after the 1st day of January, 1991, the company or unit trust scheme was a non-qualifying offshore fund and the asset constituted a material interest in that fund,

and, for the purpose of determining whether the asset disposed of is within *paragraph (b)*, *subsection (3)* of *section 584* shall apply as it applies for the purposes of the Capital Gains Tax Acts.

(2) Subject to *subsections (3)* to *(7)* and *section 742*, there shall be a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the Capital Gains Tax Acts.

(3) Notwithstanding anything in *paragraph (b)* of *section 573(2)*, where a person dies and the assets of which he or she was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter (other than *section 742*) that interest shall, immediately before the acquisition referred to in *paragraph (a)* of *section 573(2)*, be deemed to be disposed of by the deceased for such a consideration as is mentioned in that paragraph; but nothing in this subsection shall affect the determination in accordance with *subsection (1)* of the

question whether that deemed disposal is one to which this Chapter applies. PT.27 S.741

(4) Subject to *subsection (3)*, *section 573* shall apply for the purposes of this Chapter as it applies for the purposes of the Capital Gains Tax Acts, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with *subsection (1)* of that section.

(5) Notwithstanding anything in *section 586* or *587*, in any case where—

(*a*) a company (in this subsection referred to as ''the acquiring company'') issues shares or debentures in exchange for shares in or debentures of another company (in this subsection referred to as ''the acquired company'') and the acquired company is or was at a material time a non-qualifying offshore fund and the acquiring company is not such a fund, or

(*b*) persons are to be treated in consequence of an arrangement as exchanging shares, debentures or other interests in or of an entity which is or was at a material time a non-qualifying offshore fund for assets which do not constitute interests in such a fund,

then, *section 586(1)* shall not apply for the purposes of this Chapter.

(6) In any case where (apart from *subsection (5)*) *section 586(1)* would apply, the exchange concerned of shares, debentures or other interests in or of a non-qualifying fund shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

(7) (*a*) In this subsection, ''relevant consideration'' means consideration which, assuming the application to the disposal of the Capital Gains Tax Acts, would be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in title of the person making the disposal whose acquisition cost represents directly or indirectly the whole or any part of the acquisition cost of the person making the disposal.

(*b*) For the purposes of this section, a material time in relation to the disposal of an asset shall be any time on or after—

(i) the 6th day of April, 1990, where the asset was acquired on or before that date, or

(ii) where the asset was not so acquired, the earliest date on which any relevant consideration was given for the acquisition of the asset.

742.—(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if and at a time when arrangements are in existence which have the result that where— Offshore funds operating equalisation arrangements.

[FA90 s64]

Pt.27 S.742

(*a*) a person acquires by means of initial purchase a material interest in the fund at some time during a period relevant to the arrangements, and

(*b*) the fund makes a distribution for a period which begins before the date of the acquisition of that interest,

the amount of that distribution paid to the person (assuming the person is still retaining that interest) will include a payment of capital debited to an account (in this Chapter and in *Schedules 19* and *20* referred to as ''the equalisation account'') maintained under the arrangements and determined by reference to the income which had accrued to the fund at the date of the person's acquisition.

(2) For the purposes of this section, a person shall acquire an interest in an offshore fund by means of initial purchase if the person's acquisition is by—

(*a*) subscription for or allotment of new shares, units or other interests issued or created by the fund, or

(*b*) direct purchase from the persons concerned with the management of the fund and their sale to that person is made in their capacity as managers of the fund.

(3) Without prejudice to *section 741(1)*, this Chapter shall apply, subject to *subsections (4)* to *(6)*, to a disposal by any person of an asset if—

(*a*) at the time of the disposal the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements,

(*b*) the fund is not and has not at any material time (within the meaning of *section 741(7)*) been a non-qualifying offshore fund, and

(*c*) the proceeds of the disposal are not to be taken into account as a trading receipt.

(4) This Chapter shall not by virtue of *subsection (3)* apply to a disposal if—

(*a*) the disposal takes place during the period mentioned in *subsection (1)(a)*, and

(*b*) throughout so much of that period as precedes the disposal the income of the offshore fund concerned has been of the nature referred to in *paragraph 3(1)* of *Schedule 19*.

(5) An event which apart from *section 584(3)* would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether by virtue of *subsection (3)* there is a disposal to which this Chapter applies.

(6) The reference in *subsection (5)* to *section 584(3)* shall be deemed to include a reference to that section as applied by *section 586* or *733* but not as applied by *section 585*.

Material interest in offshore funds.

[FA90 s65]

743.—(1) In this Chapter, references to a material interest in an offshore fund shall be construed as references to such an interest in any of the following—

(*a*) a company resident outside the State,

(*b*) a unit trust scheme the trustees of which are not resident in the State, and

(*c*) any arrangements not within *paragraph (a)* or *(b)* which take effect by virtue of the law of a territory outside the State and which under that law create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of the State),

and any reference in this Chapter to an offshore fund shall be construed as a reference to any such company, unit trust scheme or arrangements in which any person has an interest which is a material interest.

(2) Subject to *subsections (3)* to *(9)*, a person's interest in a company, unit trust scheme or arrangements shall be a material interest if at the time when the person acquired the interest it could be reasonably expected that at some time during the period of 7 years beginning at the time of the acquisition the person would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).

(3) For the purposes of *subsection (2)*, a person shall be deemed to be able to realise the value of an interest if the person can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value of the assets of the company or, as the case may be, of the assets subject to the scheme or arrangements.

(4) For the purposes of *subsections (2)* and *(3)*—

(*a*) a person shall be deemed to be able to realise a particular amount if the person is able to obtain that amount either in money or in the form of assets to the value of that amount, and

(*b*) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in *subsection (3)*, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.

(5) An interest in a company, scheme or arrangements shall be deemed not to be a material interest if it is either—

(*a*) an interest in respect of any loan capital or debt issued or incurred for money which in the ordinary course of business of banking is loaned by a person carrying on that business, or

(*b*) a right arising under a policy of insurance.

(6) Shares in a company within *subsection (1)(a)* (in this section referred to as "the overseas company") shall not constitute a material interest if—

(*a*) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and

development of a trade carried on by the company or a company associated with it,

(*b*) the shares confer at least 10 per cent of the total voting rights in the overseas company and a right in the event of a winding up to at least 10 per cent of the assets of that company remaining after the discharge of all liabilities having priority over the shares,

(*c*) not more than 10 persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding up, and

(*d*) at the time of its acquisition of the shares the company had such a reasonable expectation as is referred to in *subsection (2)* by reason only of the existence of either or both—

(i) an arrangement under which, at some time within the period of 7 years beginning at the time of acquisition, that company may require the other participators to purchase its shares, and

(ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is or is reasonably expected to be shorter than the period referred to in *subsection (2)*,

and in this paragraph ''participators'' means the persons holding shares which are within *paragraph (c)*.

(7) For the purposes of *subsection (6)(a)*, a company shall be associated with another company if one company has control (within the meaning of *section 432*) of the other company or both companies are under the control (within the meaning of that section) of the same person or persons.

(8) An interest in a company within *subsection (1)(a)* shall be deemed not to be a material interest at any time when the following conditions are satisfied—

(*a*) that the holder of the interest has the right to have the company wound up, and

(*b*) that in the event of a winding up the holder is, by virtue of the interest and any other interest which the holder then holds in the same capacity, entitled to more than 50 per cent of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.

(9) The market value of any asset for the purposes of this Chapter shall be determined in the like manner as it would be determined for the purposes of the Capital Gains Tax Acts except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, *section 548(5)* shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

Pt.27
Non-qualifying offshore funds.

744.—(1) For the purposes of this Chapter, an offshore fund shall be a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Revenue Commissioners as a distributing fund.

[FA90 s66]

(2) An offshore fund shall not be certified as a distributing fund in respect of an account period unless with respect to that period the fund pursues a full distribution policy within the meaning of *Part 1* of *Schedule 19*.

(3) Subject to *Part 2* of *Schedule 19*, an offshore fund shall not be certified as a distributing fund in respect of any account period if at any time during that period—

(*a*) more than 5 per cent by value of the assets of the fund consists of interests in other offshore funds,

(*b*) subject to *subsections (4)* and *(5)*, more than 10 per cent by value of the assets of the fund consists of interests in a single company,

(*c*) the assets of the fund include more than 10 per cent of the issued share capital of any company or of any class of that share capital, or

(*d*) subject to *subsection (6)*, there is more than one class of material interest in the offshore fund and they do not all receive proper distribution benefits within the meaning of *subsection (7)*.

(4) For the purposes of *subsection (3)(b)*, in any account period the value, expressed as a percentage of the value of all the assets of an offshore fund, of that portion of the assets of the fund which consists of an interest in a single company shall be determined as at the most recent occasion (whether in that account period or an earlier one) on which the fund acquired an interest in that company for consideration in money or in money's worth; but for this purpose there shall be disregarded any occasion—

(*a*) on which the interest acquired constituted the new holding for the purposes of *section 584*, including that section as applied by *section 585* or *586*, and

(*b*) on which no consideration fell to be given for the interest acquired, other than the interest which constituted the original shares for the purposes of *section 584*, including that section as so applied.

(5) Except for the purpose of determining the total value of the assets of an offshore fund, an interest in a company shall be disregarded for the purposes of *subsection (3)(b)* if—

(*a*) the company carries on a banking business in the State or elsewhere which provides current or deposit account facilities in any currency for members of the public and bodies corporate, and

(*b*) the interest consists of a current or deposit account provided in the normal course of the company's banking business.

(6) There shall be disregarded for the purposes of *subsection (3)(d)* any interests in an offshore fund which—

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(*a*) are held solely by persons employed or engaged in or about the management of the assets of the fund,

(*b*) carry no right or expectation to participate directly or indirectly in any of the profits of the fund, and

(*c*) on a winding up or on redemption carry no right to receive anything other than the return of the price paid for the interests.

(7) Where in any account period of an offshore fund there is more than one class of material interests in the fund, the classes of interests shall not (for the purposes of *subsection (3)(d)*) all receive proper distribution benefits unless, were each class of interests and the assets which that class represents interests in and assets of a separate offshore fund, each of those separate funds would (with respect to that period) pursue a full distribution policy within the meaning of *Part 1* of *Schedule 19*.

(8) For the purposes of this Chapter and *Schedule 19*, an account period of an offshore fund shall begin—

(*a*) on the 6th day of April, 1990, or, if it is later, whenever the fund begins to carry on its activities, and

(*b*) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.

(9) For the purposes of this Chapter and *Schedule 19*, an account period of an offshore fund shall end on the first occurrence of any of the following—

(*a*) the expiration of 12 months from the beginning of the period;

(*b*) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period;

(*c*) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter and *Schedule 19*—

(*a*) an account period of an offshore fund which is a company within *section 743(1)(a)* shall end if and at the time when the company ceases to be resident outside the State, and

(*b*) an account period of an offshore fund which is a unit trust scheme within *section 743(1)(b)* shall end if and at the time when the trustees of the scheme become resident in the State.

(11) *Parts 3* and *4* of *Schedule 19* shall apply with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund.

Charge to income tax or corporation tax of offshore income gain.

[FA90 s67]

745.—(1) Where a disposal to which this Chapter applies gives rise, in accordance with *Schedule 20*, to an offshore income gain, then, subject to this section, the amount of that gain shall be treated for the purposes of the Tax Acts as—

(*a*) income arising at the time of the disposal to the person making the disposal, and

(*b*) constituting profits or gains chargeable to tax under Case IV of Schedule D for the chargeable period (within the meaning of *section 321(2)*) in which the disposal is made. Pt.27 S.745

(2) Subject to *subsection (3)*, *sections 25(2)(b)*, *29* and *30* shall apply in relation to income tax or corporation tax in respect of offshore income gains as they apply in relation to capital gains tax or corporation tax in respect of chargeable gains.

(3) In the application of *sections 29* and *30* in accordance with *subsection (2)*, *section 29(3)(c)* shall apply with the deletion of ''situated in the State''.

(4) In the case of individuals resident or ordinarily resident but not domiciled in the State, *subsections (4)* and *(5)* of *section 29* shall apply in relation to income tax chargeable by virtue of *subsection (1)* on an offshore income gain as they apply in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the State.

(5) (*a*) In this subsection, ''charity'' has the same meaning as in *section 208*, and ''market value'' shall be construed in accordance with *section 548*.

(*b*) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but, if the property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with *Schedule 20*) accruing being treated as an offshore income gain not accruing to a charity.

(6) In any case where—

(*a*) a disposal to which this Chapter applies is a disposal of settled property within the meaning of the Capital Gains Tax Acts, and

(*b*) for the purposes of the Capital Gains Tax Acts, the general administration of the trusts is ordinarily carried on outside the State and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the State,

then, *subsection (1)* shall not apply in relation to any offshore income gain to which the disposal gives rise.

746.—(1) Subject to *subsection (2)*, *section 579* shall apply in relation to its application to offshore income gains as if— Offshore income gains accruing to persons resident or domiciled abroad.

[FA90 s68]

(*a*) for any reference to a chargeable gain there were substituted a reference to an offshore income gain,

(*b*) in *subsection (2)* of that section—

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(i) for ''the Capital Gains Tax Acts'' there were substituted ''the Tax Acts'', and

(ii) for ''capital gains tax under *section 31*'' there were substituted ''income tax by virtue of *section 745*'',

and

(*c*) in *subsection (5)* of that section—

(i) for ''any capital gains tax payable'' there were substituted ''any income tax or corporation tax payable'', and

(ii) for ''for the purposes of income tax'' there were substituted ''for the purposes of income tax, corporation tax''.

(2) Where in any year of assessment—

(*a*) under *section 579(3)*, as it applies apart from *subsection (1)*, a chargeable gain is to be attributed to a beneficiary, and

(*b*) under *section 579(3)*, as applied by *subsection (1)*, an offshore income gain is also to be attributed to the beneficiary,

section 579 shall apply as if it required offshore income gains to be attributed before chargeable gains.

(3) *Section 590* shall apply in relation to its application to offshore income gains as if—

(*a*) for any reference to a chargeable gain there were substituted a reference to an offshore income gain,

(*b*) for the reference in *subsection (6)* of that section to capital gains tax there were substituted a reference to income tax or corporation tax, and

(*c*) *paragraphs (b)* and *(c)* of *subsection (4)*, and *subsection (7)*, of that section were deleted.

(4) *Section 917* shall apply in relation to offshore income gains as if—

(*a*) for ''chargeable gains'' there were substituted ''offshore income gains'', and

(*b*) for ''capital gains tax under *section 579* or *590*'' there were substituted ''income tax or corporation tax under *section 579* or *590*, as applied by *section 746*''.

(5) Subject to *subsection (6)*, for the purpose of determining whether an individual ordinarily resident in the State has a liability for income tax in respect of an offshore income gain arising on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled out of the State—

(*a*) *sections 806* and *807* shall apply as if the offshore income gain arising to the person resident or domiciled out of the State constituted income becoming payable to such person, and

(*b*) accordingly any reference in *sections 806* and *807* to income of, or payable or arising to, such person shall include a reference to the offshore income gain arising to such person by reason of the disposal to which this Chapter applies. Pt.27 S.746

(6) To the extent that an offshore income gain is treated by virtue of *subsection (1)* or *(3)* as having accrued to any person resident or ordinarily resident in the State, that gain shall not be deemed to be the income of any individual for the purposes of *sections 806* and *807* or *Part 31*.

Deduction of offshore income gain in determining capital gain.

[FA90 s69(1) to (7)]

747.—(1) This section shall apply where a disposal (being a disposal to which this Chapter applies) gives rise to an offshore income gain and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the Capital Gains Tax Acts, that disposal is referred to in this section as ''the disposal for the purposes of the Capital Gains Tax Acts''.

(2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of *Part 1* of *Schedule 20*), *subsections (3)* and *(4)* shall apply in relation to the disposal for the purposes of the Capital Gains Tax Acts in substitution for *section 551(2)*.

(3) Subject to *subsections (4)* to *(7)*, in the computation in accordance with the Capital Gains Tax Acts of any gain accruing on the disposal for the purposes of those Acts, a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.

(4) Where the disposal for the purposes of the Capital Gains Tax Acts is of such a nature that by virtue of *section 557* an apportionment is to be made of certain expenditure, no deduction shall be made by virtue of *subsection (3)* in determining for the purposes of the apportionment in *section 557(2)* the amount or value of the consideration for the disposal.

(5) Where the disposal for the purposes of the Capital Gains Tax Acts forms part of a transfer to which *section 600* applies, then, for the purposes of *subsection (5)(b)* of that section, the value of the whole of the consideration received by the transferor in exchange for the business shall be taken to be what it would be if the value of the consideration (other than shares so received by the transferor) were reduced by a sum equal to the offshore income gain.

(6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of *section 741(6)* or *742(5)*, the Capital Gains Tax Acts shall apply as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding (within the meaning of *section 584(1)*).

(7) In any case where—

(*a*) a disposal to which this Chapter applies by virtue of *subsection (3)* of *section 742* is made otherwise than to the offshore fund concerned or to the persons referred to in *subsection (2)(b)* of that section,

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(*b*) subsequently a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with such person, and

(*c*) the disposal gives rise (in accordance with *Part 2* of *Schedule 20*) to an offshore income gain,

then, for the purposes of the Tax Acts, the amount of the first distribution within *paragraph (b)* shall be taken to be reduced or, as the case may be, extinguished by deducting from such amount an amount equal to the offshore income gain referred to in *paragraph (c)* and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any subsequent distribution within *paragraph (b)* until the balance is exhausted.

PART 28

Purchase and Sale of Securities

CHAPTER 1

Purchase and sale of securities

Interpretation and application (*Chapter 1*).

[ITA67 s367; F(MP)A68 s3(2) and Sch PtI; CTA76 s140(1) and Sch2 PtI par17]

748.—(1) In this Chapter and in *Schedule 21*—

''distribution'' has the same meaning as in the Corporation Tax Acts;

''interest'' includes a distribution and any dividend which is not such a distribution and, in applying references to interest in relation to such a distribution, ''gross interest'' or ''gross amount'' means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it and ''net interest'' means the distribution exclusive of any such tax credit;

''person'' includes any body of persons, and references to a person entitled to any exemption from income tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

''securities'' includes stocks and shares;

securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(2) Subject to this section, this Chapter shall apply in the case of a purchase by a person (in this Chapter referred to as ''the first buyer'') of any securities and their subsequent sale by the first buyer, where the result of the transaction is that interest becoming payable in respect of the securities (in this Chapter referred to as ''the interest'') is receivable by the first buyer.

(3) This Chapter shall not apply in the case where—

(*a*) the time elapsing between the purchase by the first buyer and the first buyer's taking steps to dispose of the securities exceeds 6 months, or

(*b*) that time exceeds one month and in the opinion of the Revenue Commissioners the purchase and sale were each effected at the current market price and the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase. PT.28 S.748

(4) An appeal shall lie to the Appeal Commissioners with respect to any opinion of the Revenue Commissioners under *subsection (3)(b)* in the like manner as an appeal would lie against an assessment to income tax, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

(5) The reference in *subsection (3)* to the first buyer taking steps to dispose of the securities shall be construed—

(*a*) if the first buyer sold the securities in the exercise of an option the first buyer had acquired, as a reference to the first buyer's acquisition of the option, and

(*b*) in any other case, as a reference to the first buyer selling the securities.

(6) (*a*) For the purposes of this Chapter but subject to *paragraph (b)*, a sale of securities similar to, and of the like nominal amount as, securities previously bought (in this subsection referred to as ''the original securities'') shall be equivalent to a sale of the original securities and *subsection (5)* shall apply accordingly, and, where the first buyer bought parcels of similar securities at different times, a subsequent sale of any of the securities shall, in so far as may be, be related to the last of the parcels to be bought, and then to the last but one, and so on.

(*b*) A person shall be under no greater liability to tax by virtue of this subsection than would have been the case if instead of selling the similar securities the person had sold the original securities.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section as having been sold at that time in the open market by the person to whom they belonged immediately before that time and as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged after the change as if anything done to or by that person's predecessor had been done to or by that person.

Dealers in securities.

749.—(1) Subject to this section, where the first buyer is engaged in carrying on a trade which consists of or comprises dealings in securities, then, in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade, the price paid by the first buyer for the securities shall be reduced by the appropriate amount in respect of the interest determined in accordance with *Schedule 21*. [ITA67 s368]

(2) Where in the opinion of the Revenue Commissioners the first buyer is bona fide carrying on the business of a discount house in the State, or where the first buyer is a member of a stock exchange

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in the State who is recognised by the committee of that stock exchange as carrying on the business of a dealer, *subsection (1)* shall not apply in relation to securities bought in the ordinary course of such business.

(3) *Subsection (1)* shall not apply if the interest is to any extent required to be taken into account under *section 752* as if it were a trading receipt which had not borne tax or would to any extent be so required to be taken into account but for *paragraph 2* of *Schedule 22*.

Persons entitled to exemption.

[ITA67 s369(1); CTA76 s140(1) and Sch 2 Pt1 par18]

750.—Where the first buyer is entitled under any enactment to an exemption from tax which apart from this section would extend to the interest, then, subject to this section, the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest determined in accordance with *Schedule 21*; but, if the first buyer is so entitled and any annual payment is payable by the first buyer out of the interest, the annual payment shall be deemed as to the whole of that payment—

(*a*) to be paid out of profits or gains not brought into charge to tax, and *section 238* shall apply accordingly, and

(*b*) for the purposes of corporation tax, not to be a payment which is a charge on income.

Traders other than dealers in securities.

[ITA67 s370; CTA76 Sch2 Pt1 par19]

751.—(1) Where the first buyer carries on a trade not within *section 749*, then, in ascertaining—

(*a*) for the purposes of income tax, whether any, and if so what, repayment of tax is to be made to the first buyer under *section 381* by reference to any loss sustained in the trade for the year of assessment the first buyer's income for which includes the interest, there shall be disregarded—

(i) the appropriate amount in respect of the interest determined in accordance with *Schedule 21*, and

(ii) any tax paid on that amount;

(*b*) for the purposes of corporation tax, the income or profits against which the loss may be set off under *section 157* or *396*, there shall be disregarded the appropriate amount in respect of the interest determined in accordance with *Schedule 21.*

(2) Where the first buyer is a body corporate and carries on a trade not within *section 749* or a business consisting mainly in the making of investments, then, if any annual payment payable by the body corporate is to any extent payable out of the interest, that annual payment shall be deemed to that extent—

(*a*) for the purposes of income tax, not to be payable out of profits or gains brought into charge to tax, and *section 238* shall apply accordingly, and

(*b*) for the purposes of corporation tax, not to be a payment which is a charge on income.

Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits

Purchases of shares by financial concerns and persons exempted from tax.

[ITA67 s371; F(MP)A68 s3(2) and Sch PtI; CTA76 s140(1), s164, Sch2 Pt1 par20 and Sch3 PtI]

752.—(1) For the purposes of this Chapter and *Schedule 22*—

(*a*) references to a dividend shall, except where the context otherwise requires, be construed as including references to a distribution, and to an amount which under any enactment is to be treated as a distribution, made on or after the 6th day of April, 1976,

(*b*) in relation to such a distribution, including an amount to be so treated as a distribution, references to a dividend being paid or becoming payable or being received or becoming receivable on shares shall be construed as references to a distribution or an amount to be so treated as a distribution being made or received in respect of shares or securities, and

(*c*) in applying references to a dividend in relation to a distribution, ''gross amount'' or ''gross dividend'' means the distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and ''net amount'' or ''net dividend'' means the distribution exclusive of any such tax credit,

and in this subsection ''distribution'' has the same meaning as in the Corporation Tax Acts.

(2) (*a*) In this section and in *Schedule 22*—

''company'' includes any body corporate, but does not include a company not resident in the State;

''control'', in relation to a body corporate, means the power of a person to secure—

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person and, in relation to a partnership, means the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership;

''person'' includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

''share'' includes stock other than debenture or loan stock;

"shares of a class to which this section applies" means shares of any class forming part of a company's share capital, other than a class of fully-paid preference shares carrying only a right to dividends at a rate per cent of the nominal value of the shares which is fixed and which in the opinion of the Appeal Commissioners does not substantially exceed the yield generally obtainable on preference shares the prices of which are quoted on stock exchanges in the State.

(*b*) For the purposes of this section and *Schedule 22*—

(i) shares shall be regarded as of different classes if the rights and obligations respectively attached to them are distinguishable as regards the payment of dividends or the amount paid up or in any other respect;

(ii) any reference to shares acquired in right of other shares includes a reference to shares acquired in pursuance of an offer or invitation which was restricted to holders of those other shares;

(iii) 2 trades shall be regarded as under the same control if they are carried on by persons one of whom is a body of persons over whom the other has control or both of whom are bodies of persons under the control of a third person, and several trades shall be regarded as under the same control if each is under the same control as all of the others, and in this subparagraph "body of persons" includes a partnership.

(3) Where a person engaged in carrying on a trade which consists of or comprises dealings in shares or other investments becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

(*a*) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable,

(*b*) in a case where the trade is under the same control as another trade which consists of or comprises dealings in shares or other investments, any shares the dividend on which is payable to the person engaged in carrying on that other trade and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and

(*c*) any shares to be taken into account under *subsection (5)*,

amount to 10 per cent or more of the issued shares of that class, the net amount of the dividend received on the shares in the holding shall, to the extent to which it was paid out of profits accumulated before the shares were acquired, be taken into account in computing for the purposes of the Tax Acts the profits or gains or losses of the trade as if it were a trading receipt which had not borne tax.

(4) Where a person entitled under the Tax Acts to an exemption from tax which extends to dividends on shares becomes entitled to receive a dividend on a holding of shares of a class to which this section applies, being shares sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and the dividend is to any extent paid out of the profits accumulated before the date on which the shares were so acquired, then, if those shares, or those shares together with—

(*a*) any other shares the dividend on which is payable to that person and which were sold or issued to that person or otherwise acquired by that person not more than 10 years before the date on which the dividend becomes payable, and

(*b*) any shares to be taken into account under *subsection (5)*,

amount to 10 per cent or more of the issued shares of that class, the exemption shall, to an extent proportionate to the extent to which the dividend is paid out of profits accumulated before the date on which the shares were acquired, not apply to the dividend; but, if any annual payment is payable by that person out of the dividend, that annual payment shall be deemed as to the whole of that payment—

(i) to be paid out of profits or gains not brought into charge to tax and *section 238* shall apply accordingly, and

(ii) for the purposes of corporation tax, not to be a payment which is a charge on income.

(5) Where 2 or more persons, being persons engaged in carrying on trades of the kind mentioned in *subsection (3)* or entitled to an exemption of the kind mentioned in *subsection (4)*, have each acquired shares in a company and the transactions in pursuance of which the acquisition was made were either transactions entered into by those persons acting in concert or transactions together comprised in any arrangements made by any person, then, in the application of either of those subsections in relation to a dividend payable to one of those persons on shares which include shares so acquired (or shares acquired in right of those shares), there shall be taken into account under *subsection (3)(c)* or, as the case may be, *subsection (4)(b)* any shares the dividend on which is payable to any other of those persons, being shares so acquired by that other person (or shares acquired in right of those shares).

(6) Where any shares have been sold or otherwise disposed of by a person who held shares of that kind acquired at different times, it shall be assumed for the purposes of this section that shares which have been held for a longer time have been disposed of before shares which have been held for a shorter time.

(7) Where, at the time when a trade is or is deemed to be set up and commenced, any shares form part of the trading stock belonging to the trade, those shares shall be regarded for the purposes of this section as having been acquired at that time by the person then engaged in carrying on the trade, and, subject to this subsection, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, this section shall apply in relation to the person so engaged

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after the change as if anything done to or by that person's predecessor had been done to or by that person.

(8) *Schedule 22* shall apply for the purpose of ascertaining whether a dividend is to be regarded as paid to any extent out of profits accumulated before a particular date.

Restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits.

[ITA67 s372; CTA76 s140(1) and Sch2 Pt1 par21(1)]

753.—Where a person or a body of persons carries on a trade, other than such a trade mentioned in *section 752(3)*, and the person's or the body of persons' income for any year of assessment or, as the case may be, accounting period includes a dividend the net amount of which would, if the trade were such a trade mentioned in *section 752(3)*, be required to any extent to be taken into account as a trading receipt which has not borne tax, then, in ascertaining—

(*a*) for the purposes of income tax, whether any or what repayment of tax is to be made to that person or body of persons under *section 381* by reference to any loss sustained in the trade for that year of assessment, there shall be disregarded—

(i) the gross amount corresponding to so much of that net amount as would have been required to be taken into account as a trading receipt which has not borne tax, and

(ii) any tax credit in respect of the amount required to be disregarded under *subparagraph (i)*;

(*b*) for the purposes of corporation tax, the income or profits against which the loss may be set off under *section 157* or *396*, there shall be disregarded the gross amount corresponding to so much of that net amount as would have been required to be taken into account as a trading receipt which has not borne tax.

PART 29

Patents, Scientific and Certain Other Research, Know-How and Certain Training

CHAPTER 1

Patents

Interpretation (*Chapter 1*).

[ITA67 s284; CTA76 s21(1) and Sch1 par35; FA97 s146(1) and Sch9 PtI par1(19)]

754.—(1) In this Chapter—

''the commencement of the patent'', in relation to a patent, means the date from which the patent rights become effective;

''income from patents'' means—

(*a*) any royalty or other sum paid in respect of the user of a patent, and

(*b*) any amount on which tax is payable for any chargeable period by virtue of this Chapter;

''Irish patent'' means a patent granted under the laws of the State;

"patent rights" means the right to do or to authorise the doing of anything which but for that right would be an infringement of a patent;

"the writing-down period" has the meaning assigned to it by *section 755(2)*.

(2) In this Chapter, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent; but, if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Chapter as thereby selling the whole of the rights.

(3) Where, under section 77 of the Patents Act, 1992, or any corresponding provisions of the law of any country outside the State, an invention which is the subject of a patent is made, used, exercised or vended by or for the service of the State or the government of the country concerned, this Chapter shall apply as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.

Annual allowances for capital expenditure on purchase of patent rights.

[ITA67 s285; CTA76 s21(1) and Sch1 par36]

755.—(1) Where a person incurs capital expenditure on the purchase of patent rights, there shall, subject to and in accordance with this Chapter, be made to that person writing-down allowances in respect of that expenditure during the writing-down period; but no writing-down allowance shall be made to a person in respect of any expenditure unless—

(*a*) the allowance is to be made to the person in taxing the person's trade, or

(*b*) any income receivable by the person in respect of the rights would be liable to tax.

(2) (*a*) Subject to *paragraphs (b)* to *(d)*, the writing-down period shall be the 17 years beginning with the chargeable period related to the expenditure.

(*b*) Where the patent rights are purchased for a specified period, *paragraph (a)* shall apply with the substitution for the reference to 17 years of a reference to 17 years or the number of years comprised within that period, whichever is the less.

(*c*) Where the patent rights purchased begin one complete year or more after the commencement of the patent and *paragraph (b)* does not apply, *paragraph (a)* shall apply with the substitution for the reference to 17 years of a reference to 17 years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent or, if 17 complete years have so elapsed, of a reference to one year.

(*d*) For the purposes of this subsection, any expenditure incurred for the purposes of a trade by a person about to carry on the trade shall be treated as if that expenditure had been incurred by that person on the first day on

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which that person carries on the trade unless before that first day that person has sold all the patent rights on the purchase of which the expenditure was incurred.

Effect of lapse of patent rights.

[ITA67 s286; CTA76 s21(1) and Sch1 par37]

756.—(1) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, any of the following events occurs—

(*a*) the rights come to an end without being subsequently revived;

(*b*) the person sells all those rights or so much of those rights as the person still owns;

(*c*) the person sells part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed;

no writing-down allowance shall be made to that person for the chargeable period related to the event or for any subsequent chargeable period.

(2) Where a person incurs capital expenditure on the purchase of patent rights and, before the end of the writing-down period, either of the following events occurs—

(*a*) the rights come to an end without being subsequently revived;

(*b*) the person sells all those rights or so much of those rights as the person still owns, and the net proceeds of the sale (in so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed;

there shall, subject to and in accordance with this Chapter, be made to that person for the chargeable period related to the event an allowance (in this Chapter referred to as a ''balancing allowance'') equal to—

(i) if the event is the rights coming to an end, the amount of the capital expenditure remaining unallowed, and

(ii) if the event is a sale, the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (in so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with this Chapter, be made on that person for the chargeable period related to the sale a charge (in this Chapter referred to as a ''balancing charge'') on an amount equal to—

(*a*) the excess, or

(*b*) where the amount of the capital expenditure remaining unallowed is nil, the net proceeds of the sale.

(4) Where a person who has incurred capital expenditure on the purchase of patent rights sells a part of those rights and *subsection*

(3) does not apply, the amount of any writing-down allowance made in respect of that expenditure for the chargeable period related to the sale or any subsequent chargeable period shall be the amount determined by— Pt.29 S.756

(*a*) subtracting the net proceeds of the sale (in so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale, and

(*b*) dividing the result by the number of complete years of the writing-down period which remained at the beginning of the chargeable period related to the sale,

and so on for any subsequent sales.

(5) References in this section to the amount of any capital expenditure remaining unallowed shall in relation to any event be construed as references to the amount of that expenditure less any writing-down allowances made in respect of that expenditure for chargeable periods before the chargeable period related to that event, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, in so far as those proceeds consist of capital sums.

(6) Notwithstanding *subsections (1)* to *(5)*—

(*a*) no balancing allowance shall be made in respect of any expenditure unless a writing-down allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and

(*b*) the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total writing-down allowances actually made in respect of that expenditure less, if a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

Charges on capital sums received for sale of patent rights.

[ITA67 s288; CTA76 s21(1) and Sch1 par38]

757.—(1) (*a*) Subject to *paragraphs (b)* and *(c)*, where a person resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, that person shall, subject to this Chapter, be charged to tax under Case IV of Schedule D for the chargeable period in which the sum is received by that person and for successive chargeable periods, being charged in each period on the same fraction of the sum as the period is of 6 years (or such less fraction as has not already been charged).

(*b*) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was received elects that the whole of that sum shall be charged to tax for the chargeable period in which the sum is received, it shall be charged to tax accordingly.

(*c*) Where the person by notice in writing served on the inspector not later than 12 months after the end of the chargeable period in which the capital sum was

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received applies to have the fraction referred to in *paragraph (a)* determined as being other than the same fraction as the chargeable period is of 6 years, then, if it appears to the Revenue Commissioners that hardship is likely to arise having regard to all the circumstances of the case unless a direction is given under this paragraph, they may direct that the fraction shall be the same fraction of the sum as the chargeable period is of a number of years other than 6 years, and that the charge shall be spread accordingly.

(2) (*a*) Where a person not resident in the State sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is an Irish patent, then, subject to this Chapter—

(i) the person shall be chargeable to tax in respect of that sum under Case IV of Schedule D, and

(ii) *section 238* shall apply to that sum as if it were an annual payment payable otherwise than out of profits or gains brought into charge to tax.

(*b*) Where, not later than 12 months after the end of the year of assessment in which the sum referred to in *paragraph (a)* is paid, the person to whom it is paid, by notice in writing to the Revenue Commissioners, elects that the sum shall be treated for the purpose of income tax for that year and for each of the 5 succeeding years as if one-sixth of that sum were included in that person's income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election; but—

(i) the election shall not affect the amount of tax to be deducted and accounted for under *section 238*,

(ii) where any sum is deducted under *section 238*, any adjustments necessary to give effect to the election shall be made by means of repayment of tax, and

(iii) those adjustments shall be made year by year and as if one-sixth of the sum deducted had been deducted in respect of tax for each year, and no repayment of or of any part of that portion of the tax deducted which is to be treated as deducted in respect of tax for any year shall be made unless and until it is ascertained that the tax ultimately to be paid for that year is less than the amount of tax paid for that year.

(3) (*a*) In *subsection (2)*, ''tax'' shall mean income tax, unless the seller of the patent rights, being a company, would be within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum.

(*b*) Where *paragraph (a)* of *subsection (2)* applies to charge a company to corporation tax in respect of a sum paid to it, *paragraph (b)* of that subsection shall not apply; but—

(i) the company may, by notice in writing given to the Revenue Commissioners not later than 12 months

after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than 6 years from the beginning of the accounting period in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax by virtue of *subsection (2)(a)*), and

(ii) there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.

(4) Where the patent rights sold by a person, or the rights out of which the patent rights sold by a person were granted, were acquired by the person by purchase and the price paid consisted wholly or partly of a capital sum, *subsections (1)* to *(3)* shall apply as if any capital sum received by the person on the sale of the rights were reduced by the amount of that sum; but—

(*a*) where between the purchase and the sale the person has sold part of the patent rights acquired by the person and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction to be made under this subsection in respect of the subsequent sale shall itself be reduced by the amount of that sum, and

(*b*) nothing in this subsection shall affect the amount of tax to be deducted and accounted for under *section 238* by virtue of *subsection (2)* and, where any sum is deducted under *section 238*, any adjustment necessary to give effect to this subsection shall be made by means of repayment of tax.

(5) This section shall apply in relation to any sale of part of any patent rights as it applies in relation to sales of patent rights.

Relief for expenses.

[ITA67 s290(1) to (3); CTA76 s21(1) and Sch1 par39]

758.—(1) Notwithstanding *section 81*, in computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred in obtaining for the purposes of the trade the grant of a patent or an extension of the term of a patent.

(2) Where—

(*a*) a person, otherwise than for the purposes of a trade carried on by the person, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent or the obtaining of an extension of a term of a patent, and

(*b*) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains of the trade,

there shall be made to the person for the chargeable period in which those fees or expenses were paid or incurred an allowance equal to the amount of those fees or expenses.

(3) Where a patent is granted in respect of any invention, an allowance equal to so much of the net amount of any expenses incurred by an individual who, whether alone or in conjunction with any other

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person, actually devised the invention as is properly ascribable to the devising of that invention (not being expenses in respect of which, or of assets representing which, an allowance is to be made under any other provision of the Tax Acts) shall be made to that individual for the year of assessment in which the expenses were incurred.

Spreading of revenue payments over several years.

[ITA67 s195B(3) and (6) and s291; CTA76 s21(1) and Sch1 par40; FA93 s10(1)]

759.—(1) In this section, any reference to the tax payable by a person includes, in cases where the income of an individual's spouse is deemed to be the income of the individual, references to the income tax payable by the individual's spouse.

(2) Where a royalty or other sum to which *section 237* or *238* applies is paid in respect of the user of a patent and that user extended over a period of 6 complete years or more, the person receiving the payment may require that the tax payable by that person by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of tax which would have been payable by that person if that royalty or sum had been paid in 6 equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(3) *Subsection (2)* shall apply in relation to a royalty or other sum where the period of the user is 2 complete years or more but less than 6 complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to 6 equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(4) Nothing in this section shall apply to any sum to which *section 238* applies by virtue of *section 757*.

Capital sums: effect of death, winding up and partnership changes.

[ITA67 s195B(3) and (6) and s293; CTA76 s21(1) and Sch1 par42; FA93 s10(1)]

760.—(1) In this section, any references to tax paid or borne or payable or to be paid or borne by a person include, in cases where the income of an individual's spouse is deemed to be income of the individual, references to the income tax paid or borne, or payable or to be paid or borne, by the individual's spouse.

(2) Where a person on whom, by reason of the receipt of a capital sum, a charge is to be, or would otherwise be, made under *section 757* dies or, being a body corporate, commences to be wound up—

(*a*) no sums shall be charged under that section on that person for any chargeable period subsequent to that in which the death takes place or the winding up commences, and

(*b*) the amount to be charged for the chargeable period in which the death occurs or the winding up commences shall be increased by the total amounts which but for the death or winding up would have been charged for subsequent chargeable periods.

(3) (*a*) In the case of a death, the personal representatives may, by notice in writing served on the inspector not later than 21 days after notice has been served on them of the charge to be made by virtue of this section, require that the tax payable out of the estate of the deceased by reason of the increase provided for by this section shall be reduced so as not to exceed the amount determined in accordance with *paragraph (b)*.

(*b*) The amount referred to in *paragraph (a)* shall be the total amount of tax which would have been payable by the deceased or out of his or her estate by reason of the operation of *section 757* in relation to the capital sum if, instead of the amount to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by that whole amount divided by the number of those years.

(4) (*a*) In this subsection, ''the relevant period'' has the same meaning as in *Part 43*.

(*b*) Where, under *Chapter 4* of *Part 9* as modified by *Part 43*, charges under *section 757* are to be made on 2 or more persons as being the persons for the time being carrying on a trade, and the relevant period comes to an end, *subsection (2)* shall apply in relation to the ending of the relevant period as it applies where a body corporate commences to be wound up.

(*c*) Where *paragraph (b)* applies—

(i) the additional sums which under *subsection (2)* are to be charged for the year in which the relevant period ends shall be aggregated and apportioned among the members of the partnership immediately before the ending of the relevant period according to their respective interests in the partnership profits at that time and each partner (or, if that partner is dead, his or her personal representatives) charged for his or her proportion, and

(ii) each partner (or, if that partner is dead, his or her personal representatives) shall have the same right to require a reduction of the total tax payable by him or her or out of his or her estate by reason of the increase provided for by this section as would have been exercisable by the personal representatives under *subsection (3)* in the case of a death, and that subsection shall apply accordingly but as if the reference to the amount of tax which would have been payable by the deceased or out of his or her estate in the event mentioned in that subsection were a reference to the amount of tax which would in that event have been paid or borne by the partner in question or out of his or her estate.

Manner of making allowances and charges.

761.—(1) An allowance or charge under this Chapter shall be made to or on a person in taxing the person's trade if—

[ITA67 s292; CTA76 s21(1) and Sch1 par41]

(*a*) the person is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to tax under Case I of Schedule D for the chargeable period for which the allowance or charge is made, and

(*b*) at any time in the chargeable period or its basis period the patent rights in question, or other rights out of which they

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were granted, were or were to be used for the purposes of that trade;

but nothing in this subsection shall affect the preceding provisions of this Chapter allowing a deduction as expenses in computing the profits or gains of a trade or requiring a charge to be made under Case IV of Schedule D.

(2) Except where provided for in *subsection (1)*, an allowance under this Chapter shall be made by means of discharge or repayment of tax and shall be available against income from patents, and a charge under this Chapter shall be made under Case IV of Schedule D.

Application of *Chapter 4* of *Part 9*.

[ITA67 s299(4)(b)(iii) and s303(1); CTA76 s21(1) and Sch1 par46 and par49]

762.—(1) Subject to *subsection (2)*, *Chapter 4* of *Part 9* shall apply as if this Chapter were contained in that Part, and any reference in the Tax Acts to any capital allowance to be given by means of discharge or repayment of tax and to be available or available primarily against a specified class of income shall include a reference to any capital allowance given in accordance with *section 761(2)*.

(2) In *Chapter 4* of *Part 9*, as applied by virtue of *subsection (1)* to patent rights—

(*a*) the reference in *section 312(5)(a)(i)* to the sum mentioned in *paragraph (b)* shall in the case of patent rights be construed as a reference to the amount of the capital expenditure on the acquisition of the patent rights remaining unallowed, computed in accordance with *section 756*, and

(*b*) the reference in *section 316(1)* to any expenditure or sum in the case of which a deduction of tax is to be or may be made under *section 237* or *238* shall not include a sum in the case of which such a deduction is to be or may be so made by virtue of *section 757*.

CHAPTER 2

Scientific and certain other research

Interpretation (*sections 764* and *765*).

[ITA67 s244(1), (8) and (9); CTA76 s21(1) and Sch1 par9; FA92 s39]

763.—(1) In this section—

''designated area'' means an area designated by order under section 2 of the Continental Shelf Act, 1968;

''exploring for specified minerals'' means searching in the State for deposits of specified minerals or testing such deposits or winning access to such deposits, and includes the systematic searching for areas containing specified minerals and searching by drilling or other means for specified minerals within those areas, but does not include operations in the course of developing or working a mine;

''licence'' means—

(*a*) an exploration licence,

(*b*) a petroleum prospecting licence,

(*c*) a petroleum lease, or

(*d*) a reserved area licence, duly granted before the 11th day of June, 1968, in respect of an area in the State, or on or

after the 11th day of June, 1968, in respect of either or both a designated area and an area in the State, and which was or may be so granted subject to such licensing terms as were presented to each House of the Oireachtas, and includes any such licence the terms of which have been duly amended or varied from time to time; Pt.29 S.763

''licensed area'' means an area in respect of which a licence is in force;

''mine'' means an underground excavation for the purpose of getting specified minerals;

''petroleum'' includes—

(*a*) any mineral oil or relative hydrocarbon and natural gas and other liquid or gaseous hydrocarbons and their derivatives or constituent substances existing in its natural condition in strata (including, without limitation, distillate, condensate, casinghead gasoline and such other substances as are ordinarily produced from oil and gas wells), and

(*b*) any other mineral substance contained in oil or natural gas brought to the surface with them in the normal process of extraction, but does not include coal and bituminous shales and other stratified deposits from which oil can be extracted by distillation,

won or capable of being won under the authority of a licence;

''petroleum exploration activities'' means activities of a person carried on by the person or on behalf of the person in searching for deposits in a licensed area, in testing or appraising such deposits or in winning access to such deposits for the purposes of such searching, testing and appraising, where such activities are carried on under a licence (other than a petroleum lease) authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it;

''petroleum extraction activities'' means activities of a person carried on by the person or on behalf of the person under a petroleum lease authorising the activities and held by the person or, if the person is a company, held by the company or a company associated with it in—

(*a*) winning petroleum from a relevant field, including searching in that field for, and winning access to, such petroleum,

(*b*) transporting as far as dry land petroleum so won from a place not on dry land, or

(*c*) effecting the initial treatment and storage of petroleum so won from the relevant field;

''relevant field'' means an area in respect of which a licence, being a petroleum lease, is in force;

''specified minerals'' means the following minerals occurring in non-bedded deposits of such minerals, that is, barytes, felspar, serpentinous marble, quartz rock, soapstone, ores of copper, ores of gold, ores of iron, ores of lead, ores of manganese, ores of molybdenum, ores of silver, ores of sulphur and ores of zinc.

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(2) In *sections 764* and *765*—

''asset'' includes part of an asset;

''expenditure on scientific research'' does not include any expenditure incurred in the acquisition of rights in or arising out of scientific research;

''scientific research'' means, subject to *subsections (3)* and *(4)*, any activities in the fields of natural or applied science for the extension of knowledge.

(3) For the purposes of the definition of ''scientific research'', that definition shall, subject to *subsection (4)*, be construed as including and be deemed always to have included a provision excluding from that definition the following activities—

(*a*) exploring for specified minerals,

(*b*) petroleum exploration activities, and

(*c*) petroleum extraction activities.

(4) As respects activities carried on before the 29th day of January, 1992, *subsection (3)* shall not apply for the purpose of computing any charge to income tax or corporation tax on a person who has before the 3rd day of December, 1991, made a claim in respect of expenditure incurred in exploring for specified minerals or in respect of petroleum exploration activities or in respect of petroleum extraction activities.

(5) For the purposes of *sections 764* and *765*, expenditure shall not be regarded as incurred by a person in so far as it is or is to be met directly or indirectly out of moneys provided by the Oireachtas or by any person other than the first-mentioned person.

(6) The same expenditure shall not be taken into account for any of the purposes of *section 764* or *765* in relation to more than one trade.

Deduction for revenue expenditure on scientific research.

[ITA67 s244(2) and (2A); CTA76 s21(1) and Sch1 par9]

764.—(1) Where a person carrying on a trade either—

(*a*) incurs non-capital expenditure on scientific research relating to the trade, or

(*b*) pays any sum to—

(i) a body carrying on scientific research and approved for the purposes of this section by the Minister for Finance, or

(ii) an Irish university,

in order that such body or university may undertake scientific research,

then, the expenditure so incurred or the sum so paid shall be deducted as an expense in computing the profits or gains of the trade.

(2) Where a person carrying on a trade—

(*a*) incurs non-capital expenditure on scientific research or pays any sum to a body or university referred to in *subsection (1)(b)* in order that the body or university may undertake scientific research, and PT.29 S.764

(*b*) the expenditure so incurred or the sum so paid is not deductible as an expense under *subsection (1)* because the scientific research is not related to any trade being carried on by the person,

then, the expenditure so incurred or the sum so paid shall be deducted as an expense in computing the profits or gains of the person's trade.

Allowances for capital expenditure on scientific research.

[ITA67 s244(3), (4), (5), (6) and (7); CTA76 s21(1) and Sch1 par9; FA80 s17(3); FA96 s132(2) and Sch5 PtII]

765.—(1) Where a person—

(*a*) incurs capital expenditure on scientific research,

(*b*) (i) is then carrying on a trade to which such expenditure relates, or

(ii) subsequently sets up and commences a trade which is related to such research,

(*c*) applies to the inspector for an allowance under this subsection in respect of such expenditure, and

(*d*) so applies—

(i) in the case where the expenditure was incurred while carrying on the trade, within 24 months after the end of the chargeable period in which it was incurred, or

(ii) in the case where the expenditure was incurred before the setting up and commencement of the trade, within 24 months after the end of the chargeable period in which the trade was set up and commenced,

then, subject to this section, there shall be made in taxing the trade for the chargeable period mentioned in whichever of *subparagraphs (i)* and *(ii)* of *paragraph (d)* is applicable an allowance equal to the amount of the expenditure.

(2) Where a person carrying on a trade incurs capital expenditure on scientific research in respect of which an allowance may not be made under *subsection (1)* because the scientific research is not related to any trade being carried on by that person, there shall be made in taxing that person's trade for the chargeable period in which the expenditure was incurred an allowance equal to the amount of the expenditure.

(3) Where an asset representing capital expenditure on scientific research ceases at any time from any cause whatever to be used for such research, relating to the trade carried on by the person who incurred the expenditure, then—

(*a*) an amount equal to the allowance made under this section in respect of that expenditure, or, if the value of the asset immediately before the cessation is less than that allowance, equal to that value, shall be treated as a trading receipt of the trade accruing immediately before the cessation, and

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(*b*) in the application of *section 284* to an allowance made in respect of the asset for any chargeable period after that in which the cessation takes place, the actual cost of the asset shall be treated as being reduced by the amount of the allowance effectively made.

(4) Where an allowance under this section is made to a person for any chargeable period in respect of expenditure represented wholly or partly by assets, no allowance in respect of those assets shall be made to that person under *section 85* or *284* for that chargeable period.

(5) *Section 304(4)* shall apply in relation to an allowance under *subsection (1)* or *(2)* as it applies in relation to allowances to be made under *Part 9*.

Deduction for certain expenditure on research and development.

[FA95 s59(1) to (4); FA96 s57(1)]

766.—(1) (*a*) In this section—

''appropriate inspector'' has the same meaning as in *section 950*;

''base period'' means the period of 12 months ending immediately before the commencement of the first relevant period;

''expenditure on research and development'' means non-capital expenditure incurred by a company, being—

(i) an amount equal to 115 per cent of the aggregate of the amounts of—

(I) such part of the emoluments paid by the company to employees of the company engaged in the carrying out of research and development activities related to the company's trade as is laid out for the purposes of those activities, and

(II) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade,

but where expenditure referred to in *clauses (I)* and *(II)* is incurred by a company (in this definition referred to as ''the first-mentioned company'') which is a member of a group on behalf of another company which is a member of the group, the other company shall be treated for the purposes of the Corporation Tax Acts as having incurred the expenditure and the first-mentioned company shall be treated for those purposes as not having incurred the expenditure, and

(ii) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade;

''group base expenditure on research and development'' means the aggregate of the amounts of expenditure on research and development incurred in the base period by qualified companies which throughout that period are members of the group;

''group expenditure on research and development'', in relation to a relevant period, means the aggregate of the amounts of expenditure on research and development—

(i) incurred, or treated as incurred, in the relevant period by qualified companies which throughout the relevant period are members of the group, and

(ii) certified as having been incurred by those companies in certificates given to the companies by persons who are auditors of the companies appointed under section 160 of the Companies Act, 1963, or under the law of any territory where any such company is duly incorporated and which corresponds to that section;

''qualified company'', in relation to a relevant period, means a company which—

(i) throughout the relevant period carries on a trade which consists wholly or mainly of the manufacture of goods in the State, but trading operations of a company shall not be treated for the purposes of this section as the manufacture of goods in the State by virtue of any section of the Tax Acts other than *section 443*,

(ii) holds a certificate given to it by Forbairt which certifies that in the opinion of Forbairt the research and development activities which are proposed to be carried on by or on behalf of the company have the potential to achieve the purposes set out in *paragraph (iii)* of the definition of ''research and development activities'',

(iii) notifies the appropriate inspector before the commencement of the research and development activities of its intention to carry out such activities or to have such activities carried out on its behalf,

(iv) maintains a record of expenditure incurred in the carrying on by it or on its behalf of research and development activities in accordance with a system approved by Forbairt of recording such expenditure, and

(v) does not, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, raise any amount through the issue of eligible shares within the meaning of *section 488*;

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''qualifying expenditure on research and development attributable to a qualified company'', in relation to a relevant period, means so much of the amount of qualifying group expenditure on research and development in the relevant period as bears to that amount the same proportion as the amount of expenditure on research and development incurred by the company in the relevant period bears to the group expenditure on research and development in the relevant period;

''qualifying group expenditure on research and development'', in relation to a relevant period, means an amount determined by the formula—

$$E - (D + £25,000)$$

where—

E is the amount of group expenditure on research and development in the relevant period, and

D is—

(i) where the relevant period commences before the 1st day of June, 1996, the greater of—

(I) the amount of group base expenditure on research and development, and

(II) the amount of group expenditure on research and development in any relevant period preceding that relevant period,

and

(ii) where the relevant period commences on or after the 1st day of June, 1996, the amount of group base expenditure on research and development,

but—

(A) the qualifying group expenditure on research and development in relation to a relevant period shall not in any case exceed £150,000, and

(B) the aggregate of the amounts of qualifying group expenditure on research and development in all relevant periods shall not exceed the aggregate of the amounts specified in certificates given by Forbairt to companies which are members of the group;

''relevant period'' means—

(i) in the case of a company which is a member of a group the end of the accounting periods of the members of which coincide, the period of 12 months throughout which one or more members

of the group carried on a trade and ending at the end of the first accounting period of the company which commences on or after the 1st day of June, 1995,

(ii) in the case of a company which is a member of a group the end of the accounting periods of which do not coincide, the period specified in a notice in writing made jointly by companies which are members of the group and given to the appropriate inspector within a period of 9 months after the end of the period so specified, being a period of 12 months throughout which one or more members of the group carries on a trade and ending at the end of the first accounting period of a company which is a member of the group which accounting period commences on or after the 1st day of June, 1995, and

(iii) in any other case, the period of 12 months commencing on the 1st day of June, 1995,

and each subsequent period of 12 months, commencing immediately after the end of the preceding relevant period, which falls wholly in the period of 3 years commencing at the beginning of the first relevant period, but a period shall not be a relevant period if it commences on or after the 1st day of June, 1999;

''research and development activities'' means systematic, investigative or experimental activities which—

(i) are carried on wholly or mainly in the State,

(ii) involve innovation or technical risk, and

(iii) are carried on for the purpose of—

(I) acquiring new knowledge with a view to that knowledge having a specific commercial application, or

(II) creating new or improved materials, products, devices, processes or services,

and other activities carried on wholly or mainly in the State for a purpose directly related to the carrying on of activities of the kind referred to in *paragraph (iii)*, but activities that are carried on by means of—

(A) market research, market testing, market development, sales promotion or consumer surveys,

(B) quality control,

(C) the making of cosmetic modifications or stylistic changes to products, processes or production methods,

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(D) management studies or efficiency surveys, or

(E) research in social sciences, arts or humanities,

shall not be research and development activities.

(*b*) For the purposes of this section—

(i) 2 companies shall be deemed to be members of a group if one company is an associated company (within the meaning of *section 432*) of the other company;

(ii) a company and all its associated companies shall form a group; but a company which is not a member of a group shall be treated as if it were a member of a group which consists of that company, and accordingly references to group expenditure on research and development, group base expenditure and qualifying group expenditure on research and development shall be construed as if they were respectively references to expenditure on research and development, base expenditure and qualifying expenditure on research and development;

(iii) systematic, investigative or experimental activities, or other activities, shall be regarded as carried on wholly or mainly in the State only if not less than 75 per cent of the total amount expended in the course of such activities is expended in the State;

(iv) as respects any relevant period commencing before the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred by a company which is a member of a group if any expenditure on research and development incurred in a relevant period or in the base period by a company which is a member of the group has been or is to be met directly or indirectly by the State or any person other than a company which is a member of the group;

(v) as respects any relevant period commencing on or after the 1st day of June, 1996, expenditure on research and development shall not be regarded as having been incurred in a relevant period by a company which is a member of a group if—

(I) in the relevant period the aggregate of amounts received by companies which are members of the group, being amounts paid directly or indirectly to the companies by the State or a person, other than a company which is a member of the group, to enable the company to meet the cost of such expenditure, exceeds £50,000, or

(II) it is expenditure—

(A) approved by Forbairt under any scheme administered by it, and

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(B) which has been or is to be met to any extent directly or indirectly by the State or any person other than a company which is a member of the group.

(2) (*a*) In this subsection—

"income from the sale of goods" has the same meaning as in *section 454*;

"a loss from the sale of goods" has the same meaning as in *section 455*.

(*b*) On making a claim in that behalf, a qualified company shall be entitled, in computing the trading income for an accounting period of a trade carried on by it, to deduct an amount equal to treble the qualifying expenditure on research and development attributable to the qualified company as is referable to the accounting period and, subject to *paragraph (c)*, the company shall be entitled to such a deduction in addition to any deduction to which the qualified company may otherwise be entitled in respect of expenditure incurred on research and development.

(*c*) Where the amount referred to in *paragraph (b)* exceeds an amount which apart from this subsection would be the income from the sale of goods of the trade so referred to for the accounting period, then, the excess—

(i) shall not be deductible by virtue of *paragraph (b)*, and

(ii) shall be treated as a loss incurred in that trade, which is a loss from the sale of goods, for the purposes of relief under—

(I) *section 455* or *456*, or

(II) to the extent that such relief does not exceed the income from the sale of goods in the course of that trade in the accounting period for which that relief is given, *section 396(1)*.

(3) For the purposes of *subsection (2)*—

(*a*) where a relevant period coincides with an accounting period of a qualified company, the amount of qualifying expenditure on research and development attributable to the qualified company which relates to the accounting period of the company shall be the amount of that qualifying expenditure attributable to the qualified company, and

(*b*) where the relevant period does not coincide with an accounting period of the company—

(i) the qualifying expenditure on research and development attributable to the qualified company shall be apportioned to the accounting periods which fall wholly or partly in the relevant period, and

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(ii) the amount so apportioned to an accounting period shall be treated as the amount of qualifying expenditure on research and development attributable to the qualified company which relates to that accounting period of the company.

(4) Where a company makes a claim under this section, the company shall be treated for the purpose of *Part 16* as not being a qualifying company in respect of any amount raised, at any time during the period commencing on the 10th day of May, 1995, and ending 3 years after the commencement of the first relevant period, by the issue of eligible shares within the meaning of *section 488*.

Payment to universities and other approved bodies for research in, or teaching of, approved subjects.

[FA73 s21; FA85 s15]

767.—(1) In this section—

''approved body'' means—

(*a*) the College of Industrial Relations, Ranelagh, Dublin, or

(*b*) any of the following colleges established under the Vocational Education Act, 1930—

(i) colleges forming part of the Dublin Institute of Technology,

(ii) the Limerick College of Art, Commerce and Technology, or

(iii) regional technical colleges;

''approved subject'' means—

(*a*) industrial relations,

(*b*) marketing, or

(*c*) any other subject which is approved for the purposes of this section by the Minister for Finance.

(2) Where a person carrying on a trade or profession—

(*a*) pays any sum to—

(i) an Irish university, or

(ii) an approved body,

for the purpose of enabling the university or the approved body to undertake research in, or engage in the teaching of, an approved subject, and

(*b*) the sum so paid is not income to which *section 792* applies,

the sum so paid shall, if not otherwise so deductible, be deducted as an expense in computing the profits or gains of the person's trade or profession.

CHAPTER 3

Know-how and certain training

Allowance for know-how.

[FA68 s2]

768.—(1) In this section—

''control'' has the same meaning as in *section 312*;

''know-how'' means industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in

the carrying out of any agricultural, forestry, fishing, mining or other extractive operations; PT.29 S.768

references to a body of persons include references to a partnership.

(2) (*a*) For the purposes of this subsection, a person incurring expenditure on know-how before the setting up and commencement of the trade in which it is used shall be treated as incurring it on that setting up and commencement.

(*b*) Where a person incurs expenditure on know-how for use in a trade carried on by the person or, having incurred expenditure on know-how, sets up and commences a trade in which it is used, there shall, subject to this section, be allowed to be deducted as expenses, in computing for the purposes of Case I of Schedule D the profits or gains of the trade, such part of the expenditure as would but for this section not be allowed to be so deducted.

(3) Where a person acquires a trade or part of a trade and, together with the trade or the part of the trade, know-how used in the trade or part of the trade, no amount shall be allowed to be deducted under this section in respect of expenditure incurred on the acquisition of the know-how.

(4) *Subsection (2)* shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them.

Relief for training of local staff before commencement of trading.

[ITA67 s305; CTA76 s21(1) and Sch1 par51; FA93 s34(1)(c)]

769.—(1) Where, before the day of the setting up or commencement of a trade consisting of the production for sale of manufactured goods, a person who is about to carry on the trade incurs or has incurred expenditure on the recruitment and training, with a view to their employment in the trade, of persons all or a majority of whom are Irish citizens, there shall be made to such person allowances in respect of that expenditure during a writing-down period of 3 years beginning on that day, and such allowances shall be made in taxing the trade.

(2) For the purposes of this section—

(*a*) expenditure shall not include any expenditure incurred by a person in respect of which no deduction would have been allowable to the person, in computing the profits or gains of the trade under the provisions of the Tax Acts applicable to Case I of Schedule D, if it had been incurred on or after the day of the setting up or commencement of the trade;

(*b*) expenditure shall not be regarded as having been incurred by a person in so far as it has been or is to be met directly or indirectly by the State or by any person other than the first-mentioned person;

(*c*) the date on which any expenditure is incurred shall be taken to be the date on which the sum in question becomes payable.

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(3) *Section 304(4)* shall apply in relation to an allowance under *subsection (1)* as it applies in relation to an allowance to be made under *Part 9*.

(4) For the purposes of the Income Tax Acts, any claim by a person for an allowance under this section shall be included in the annual statement required to be delivered under those Acts of the profits or gains of the person's trade and shall be accompanied by a certificate signed by the claimant (which shall be deemed to form part of the claim) stating that the expenditure was incurred on the recruitment and training, with a view to their employment in the trade, of persons all or a majority of whom are Irish citizens and giving such particulars as show that the allowance is to be made.

PART 30

Occupational Pension Schemes, Retirement Annuities, Purchased Life Annuities and Certain Pensions

CHAPTER 1

Occupational pension schemes

Interpretation and supplemental (*Chapter 1*).

[FA72 s13(1), (2) and (4); FA74 s86 and Sch2 PtII]

770.—(1) In this Chapter, except where the context otherwise requires—

''administrator'', in relation to a retirement benefits scheme, means the person or persons having the management of the scheme, and references to the administrator of a scheme shall be deemed to include the person mentioned in *section 772(2)(c)*;

''approved scheme'' means a retirement benefits scheme for the time being approved by the Revenue Commissioners for the purposes of this Chapter;

''company'' includes any body corporate or unincorporated body of persons other than a partnership;

''director'', in relation to a company, includes—

(*a*) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(*b*) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,

(*c*) in the case of a company the affairs of which are managed by the members themselves, a member of that company,

and includes a person who is to be or has been a director;

''employee''—

(*a*) in relation to a company, includes an officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and

(*b*) in relation to any employer, includes a person who is to be or has been an employee,

and ''employer'' and other cognate expressions shall be construed accordingly; PT.30 S.770

''exempt approved scheme'' has the meaning assigned to it by *section 774*;

''final remuneration'' means the average annual remuneration of the last 3 years' service;

''pension'' includes annuity;

''relevant benefits'' means any pension, lump sum, gratuity or other like benefit—

(*a*) given or to be given on retirement or on death or in anticipation of retirement or, in connection with past service, after retirement or death, or

(*b*) to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question,

but does not include any benefit which is to be afforded solely by reason of the death or disability of a person resulting from an accident arising out of or in the course of his or her office or employment and for no other reason;

''service'' means service as an employee of the employer in question and other expressions, including ''retirement'', shall be construed accordingly;

''statutory scheme'' means a retirement benefits scheme established by or under any enactment.

(2) Any reference in this Chapter to the provision of relevant benefits, or of a pension, for employees of an employer includes a reference to the provision of those benefits or that pension by means of a contract between the administrator or the employer and a third person.

(3) *Schedule 23* shall apply for the purposes of supplementing this Chapter and shall be construed as one with this Chapter.

Meaning of ''retirement benefits scheme''.

771.—(1) In this Chapter, ''retirement benefits scheme'' means, subject to this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include any scheme under the Social Welfare (Consolidation) Act, 1993, providing such benefits. [FA72 s14]

(2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements or other arrangements providing for relevant benefits, notwithstanding that it relates or they relate only to—

(*a*) a small number of employees or to a single employee, or

(*b*) the payment of a pension starting immediately on the making of the arrangements.

(3) The Revenue Commissioners may if they think fit treat a retirement benefits scheme relating to employees of 2 or more different classes or descriptions as being for the purposes of this Chapter

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2 or more separate retirement benefits schemes relating respectively to such one or more of those classes or descriptions of those employees as the Revenue Commissioners think fit.

(4) For the purposes of this Chapter—

(*a*) employees may be regarded as belonging to different classes or descriptions if they are employed by different employers, and

(*b*) a particular class or description of employee may consist of a single employee or any number of employees.

Conditions for approval of schemes and discretionary approval.

[FA72 s15(1) to (7); FA74 s64(1); FA92 s6(a); FA96 s131(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par5(1)]

772.—(1) Subject to this section, the Revenue Commissioners shall approve any retirement benefits scheme for the purposes of this Chapter if it satisfies all of the prescribed conditions, namely—

(*a*) the conditions set out in *subsection (2)*, and

(*b*) the conditions as respects benefits set out in *subsection (3)*.

(2) The conditions referred to in *subsection (1)(a)* are—

(*a*) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to, or to the widow or widower, children or dependants or personal representatives of, the employee;

(*b*) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is or has a right to be a member of the scheme has been given written particulars of all essential features of the scheme which concern the employee;

(*c*) that there is a person resident in the State who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter;

(*d*) that the employer is a contributor to the scheme;

(*e*) that the scheme is established in connection with some trade or undertaking carried on in the State by a person resident in the State;

(*f*) that no amount can be paid, whether during the subsistence of the scheme or later, by means of repayment of an employee's contributions under the scheme.

(3) The conditions as respects benefits referred to in *subsection (1)(b)* are—

(*a*) that any benefit for an employee is a pension on retirement at a specified age not earlier than 60 years and not later than 70 years, or on earlier retirement through incapacity, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40 years;

(*b*) that any pension for any widow or widower of an employee who dies before retirement shall be a pension payable on the employee's death of an amount that does not exceed

two-thirds of any pension or pensions which, consonant with the condition in *paragraph (a)*, could have been provided for the employee on retirement on attaining the specified age, if the employee had continued to serve until the employee attained that age at an annual rate of remuneration equal to the employee's final remuneration;

(*c*) that any lump sums provided for any widow or widower, children, dependants or personal representatives of an employee who dies before retirement shall not exceed in the aggregate 4 times the employee's final remuneration;

(*d*) that any benefit for any widow or widower of an employee payable on the employee's death after retirement is a pension such that the amount payable to the widow or widower does not exceed two-thirds of any pension or pensions payable to the employee;

(*e*) that any pensions for the children or dependants of an employee who dies before retirement or on the employee's death after retirement shall not exceed in the aggregate one-half of the pension specified in *paragraph (b)* or *(d)*, as the case may be;

(*f*) that no pension is capable in whole or in part of surrender, commutation or assignment, except in so far as the scheme allows an employee on retirement to obtain by commutation of the employee's pension a lump sum or sums not exceeding in all three-eightieths of the employee's final remuneration for each year of service up to a maximum of 40 years;

(*g*) that no other benefits are payable under the scheme.

(4) (*a*) The Revenue Commissioners may if they think fit having regard to the facts of a particular case and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter, notwithstanding that it does not satisfy one or more of the prescribed conditions.

(*b*) The Revenue Commissioners may in particular approve by virtue of this subsection a scheme which—

(i) exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years' service,

(ii) allows benefits to be payable on retirement within 10 years of the specified age or on earlier incapacity,

(iii) provides for the return in certain contingencies of employees' contributions and payment of interest (if any) on the contributions, or

(iv) relates to a trade or undertaking carried on only partly in the State and by a person not resident in the State.

(5) Where in the opinion of the Revenue Commissioners the facts concerning any scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time,

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by notice in writing to the administrator, withdraw their approval on such grounds, and from such date, as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, no approval given as regards the scheme before the alteration shall apply after the date of the alteration unless the alteration has been approved by the Revenue Commissioners.

(7) For the purpose of determining whether a retirement benefits scheme, in so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and, if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them but otherwise those conditions shall be taken to be satisfied in the case of none of them.

General Medical Services: scheme of superannuation.

[FA91 s12]

773.—(1) The Revenue Commissioners may, if they think fit and subject to any undertakings and conditions that they think proper to attach to the approval, approve for the purposes of this Chapter a scheme of superannuation provided for under an agreement for the provision of services under section 58 of the Health Act, 1970 (in this section referred to as a ''relevant scheme'') as if it were a retirement benefits scheme within the meaning of this Chapter and notwithstanding that it does not satisfy one or more of the conditions set out in *subsections (2)* and *(3)* of *section 772*.

(2) As respects a relevant scheme approved under this section, this Chapter and *Schedule 23* shall apply subject to any necessary modifications and in particular as if in this Chapter and in that Schedule—

(*a*) ''employee'' included a registered medical practitioner providing services under an agreement for the provision of services under section 58 of the Health Act, 1970 (in this section referred to as an ''agreement''),

(*b*) ''service'' included services by a registered medical practitioner under an agreement and an ''office or employment'' included the provision of such services, and

(*c*) a reference to Schedule E were a reference to Case II of Schedule D except in *section 779*.

(3) *Chapter 2* of this Part shall apply as if a member of a relevant scheme were the holder of a pensionable office or employment and such member's income assessable to tax under Case II of Schedule D arising from an agreement were remuneration from such an office or employment.

Certain approved schemes: exemptions and reliefs.

[FA72 s16(1) to (5) and (7); CTA76 s164 and Sch3 PtI; FA88 s30(1) and (2)(a); FA91 s38; FA97 s41(1)(a) and (3)]

774.—(1) This section shall apply as respects—

(*a*) any approved scheme shown to the satisfaction of the Revenue Commissioners to be established under irrevocable trusts, or

(*b*) any other approved scheme as respects which the Revenue Commissioners, having regard to any special circumstances, direct that this section shall apply,

and any scheme which is for the time being within *paragraph (a)* or *(b)* is in this Chapter referred to as an ''exempt approved scheme''. Pt.30 S.774

(2) This section shall apply only as respects income arising or contributions paid at a time when a scheme is an exempt approved scheme.

(3) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits of a scheme if, or to such extent as the Revenue Commissioners are satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(4) (*a*) In this subsection, ''financial futures'' and ''traded options'' mean respectively financial futures and traded options for the time being dealt in or quoted on any futures exchange or any stock exchange, whether or not that exchange is situated in the State.

(*b*) For the purposes of *subsection (3)*, a contract entered into in the course of dealing in financial futures or traded options shall be regarded as an investment.

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Revenue Commissioners are satisfied that, the underwriting commissions are applied for the purposes of the scheme, and in respect of which the trustees of the scheme would but for this subsection be chargeable to tax under Case IV of Schedule D.

(6) (*a*) For the purposes of this section and *section 775*—

(i) a reference to a ''chargeable period'' shall be construed as a reference to a ''chargeable period or its basis period'' (within the meaning of *section 321*), and

(ii) in relation to an employer whose chargeable period is a year of assessment, ''basis period'' means the period on the profits or gains of which income tax for that year of assessment is to be finally computed for the purposes of Case I or II of Schedule D in respect of the trade, profession or vocation of the employer.

(*b*) Any sum paid by an employer by means of contribution under the scheme shall for the purposes of Case I or II of Schedule D and of *sections 83* and *707(4)* be allowed to be deducted as an expense, or expense of management, incurred in the chargeable period in which the sum is paid but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the scheme.

(*c*) The amount of an employer's contributions which may be deducted under *paragraph (b)* shall not exceed the amount contributed by that employer under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to income tax or corporation tax, as the case may be.

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(*d*) A sum not paid by means of an ordinary annual contribution shall for the purposes of *paragraph (b)* be treated, as the Revenue Commissioners may direct, either as an expense incurred in the chargeable period in which the sum is paid, or as an expense to be spread over such period of years as the Revenue Commissioners think proper.

(*e*) In the case of any employer for a chargeable period, being—

(i) where the chargeable period is an accounting period of a company, an accounting period ending on or before the 21st day of April, 1997, and

(ii) where the chargeable period is a year of assessment, any year of assessment the employer's basis period for which ends on or before that date,

this subsection shall apply subject to *paragraph 26* of *Schedule 32*.

(7) (*a*) Any ordinary annual contribution paid under the scheme by an employee shall, in assessing income tax under Schedule E, be allowed to be deducted as an expense incurred in the year in which the contribution is paid.

(*b*) Any contribution, which is not an ordinary annual contribution, paid or borne by an employee under the scheme may, as the Revenue Commissioners think proper—

(i) be treated, as respects the year in which it is paid, as an ordinary annual contribution paid in that year, or

(ii) be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.

(*c*) The aggregate amount of any contributions (whether ordinary annual contributions or contributions treated as ordinary annual contributions) allowed to be deducted in any year shall not exceed 15 per cent of the remuneration for that year of the office or employment in respect of which the contributions are paid.

Certain approved schemes: provisions supplementary to *section 774(6)*.

[FA72 s16A; FA97 s41(1)(b)]

775.—(1) Where—

(*a*) after the 21st day of April, 1997, there is an actual payment by an employer of a contribution under an exempt approved scheme,

(*b*) apart from this section that payment would be allowed to be deducted as an expense, or expense of management, of the employer in relation to any chargeable period, and

(*c*) the total of previously allowed deductions exceeds the relevant maximum,

then, the amount allowed to be so deducted in respect of the payment mentioned in *paragraph (a)* and of any other actual payments of contributions under the scheme which, having been made after the 21st day of April, 1997, are within *paragraph (b)* in relation to

the same chargeable period shall be reduced by whichever is the lesser of the excess and the amount which reduces the deduction to nil. PT.30 S.775

(2) In relation to any such actual payment by an employer of a contribution under an exempt approved scheme as would be allowed to be deducted as mentioned in *subsection (1)* in relation to any chargeable period—

(*a*) the reference in that subsection to the total of previously allowed deductions is a reference to the aggregate of every amount in respect of the making, or any provision for the making, of that or any other contribution under the scheme, which has been allowed to be deducted as an expense, or expense of management, of that person in relation to all previous chargeable periods, and

(*b*) the reference to the relevant maximum is a reference to the amount which would have been that aggregate if the restriction on deductions for sums other than actual payments imposed by virtue of *section 774(6)* had been applied in relation to every previous chargeable period,

and for the purposes of this subsection an amount the deduction of the whole or any part of which is to be taken into account as allowed in relation to more than one chargeable period shall be treated as if the amount allowed were a different amount in the case of each of those periods.

(3) For the purposes of this section, any payment which is treated under *paragraph (d)* of *section 774(6)* as spread over a period of years shall be treated as actually paid at the time when it is treated as paid in accordance with that paragraph.

Certain statutory schemes: exemptions and reliefs.

[FA72 s17(1) and (2)]

776.—(1) This section shall apply to any statutory scheme established under a public statute.

(2) (*a*) Any ordinary annual contribution paid under a scheme to which this section applies by any officer or employee shall, in assessing income tax under Schedule E, be allowed to be deducted as an expense incurred in the year in which the contribution is paid.

(*b*) Any contribution, which is not an ordinary annual contribution, paid or borne by an officer or employee under a scheme to which this section applies may, as the Revenue Commissioners think proper—

(i) be treated, as respects the year in which it is paid, as an ordinary annual contribution paid in that year, or

(ii) be apportioned among such years as the Revenue Commissioners direct, and the amount of the contribution attributed thereby to any year shall be treated as an ordinary annual contribution paid in that year.

(*c*) The aggregate amount of any contributions (whether ordinary annual contributions or contributions treated as ordinary annual contributions) allowed to be deducted in any year shall not exceed 15 per cent of the remuneration for that year of the office or employment in respect of which the contributions are paid.

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Charge to income tax in respect of certain relevant benefits provided for employees.

[FA72 s18(1)(a), (2), (3), (4) and (5); FA97 s146(1) and Sch9 PtI par5(2)]

777.—(1) Subject to this Chapter, where pursuant to a retirement benefits scheme the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency), the sum paid, if not otherwise chargeable to income tax as income of the employee, shall be deemed for the purposes of the Income Tax Acts to be income of that employee for that year of assessment and assessable to income tax under Schedule E.

(2) Subject to this Chapter, where—

(*a*) the circumstances in which any relevant benefits under a retirement benefits scheme are to accrue are not such as will render the benefits assessable to income tax as emoluments of the employee in respect of whom the benefits are paid, and

(*b*) the provision of those benefits is not, or is not fully, secured by the payment of sums by the employer with a view to the provision of those benefits,

then (whether or not the accrual of the benefits is dependent on any contingency), an amount equal to the cost, estimated in accordance with *subsection (3)*, of securing the provision by a third person of the benefits or, as the case may be, of the benefits in so far as not already secured by the payment of sums mentioned in *subsection (1)* shall be deemed for the purposes of the Income Tax Acts to be income of the employee for the year or years of assessment specified in *subsection (3)* and assessable to income tax under Schedule E.

(3) The cost referred to in *subsection (2)* shall be estimated either—

(*a*) as an annual sum payable in each year of assessment in which the scheme in question is in force or the employee is serving, up to and including the year of assessment in which the benefits accrue or there ceases to be any possibility of the accrual of the benefits, or

(*b*) as a single sum payable in the year of assessment in which falls the date when the employee acquired the right to the relevant benefits or the date when the employee acquired the right to any increase in the relevant benefits,

as may be more appropriate in the circumstances of the case.

(4) Where the employer pays any sum mentioned in *subsection (1)* in relation to more than one employee, the sum so paid shall for the purpose of that subsection be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(5) Any reference in this section to the provision for an employee of relevant benefits shall include a reference to the provision of benefits payable to the employee's spouse, widow or widower, children, dependants or personal representatives.

Exceptions to charge to tax under *section 777*.

[FA72 s19]

778.—(1) Neither *subsection (1)* nor *subsection (2)* of *section 777* shall apply where the retirement benefits scheme in question is—

(*a*) an approved scheme,

(*b*) a statutory scheme, or

(*c*) a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

(2) Neither *subsection (1)* nor *subsection (2)* of *section 777* shall apply for any year of assessment where apart from those subsections the employee is under the Income Tax Acts either not assessable to income tax in respect of the emoluments of his or her employment or is so assessable in respect of those emoluments on the basis of the amount received in the State.

(3) Where, in respect of the provision for an employee of any relevant benefits, a sum has been deemed to be income of the employee by virtue of *subsection (1)* or *(2)* of *section 777*, and subsequently the employee proves to the satisfaction of the Revenue Commissioners—

(*a*) that no payment in respect of or in substitution for the benefits has been made, and

(*b*) that some event has occurred by reason of which no such payment will be made,

and the employee makes application for relief under this subsection within 6 years from the time when that event occurred, the Revenue Commissioners shall give relief in respect of tax on that sum by repayment or otherwise as may be appropriate, and, if the employee satisfies the Revenue Commissioners in relation to some particular part of the benefits but not the whole of the benefits, the Revenue Commissioners may give such relief as may seem to them just and reasonable.

Charge to income tax of pensions under Schedule E.

[FA72 s20]

779.—(1) Subject to *subsection (2)*, pensions paid under any scheme which is approved or is being considered for approval under this Chapter shall be charged to income tax under Schedule E, and *Chapter 4* of *Part 42* shall apply accordingly.

(2) In respect of any scheme which is approved or is being considered for approval under this Chapter, the Revenue Commissioners may direct that until such date as they may specify pensions under the scheme shall be charged to tax as annual payments under Case III of Schedule D, and tax shall be deductible under *section 237* or *238* accordingly.

Charge to income tax on repayment of employees' contributions.

[FA72 s21(1) to (5)(a) and (6) and (7); FA73 s18; FA92 s6(b)]

780.—(1) In this section and in *section 781*, ''employee'', in relation to a statutory scheme, includes an officer.

(2) Subject to this section, tax shall be charged under this section on any repayment to an employee during his or her lifetime of any contribution (including interest on contributions, if any) if the payment is made under—

(*a*) a scheme which is or has at any time been an exempt approved scheme, or

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(*b*) a statutory scheme established under a public statute.

(3) This section shall not apply where the employee's employment was carried on outside the State.

(4) *Subsection (2)(a)* shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme unless it again becomes an exempt approved scheme.

(5) Where any payment is chargeable to tax under this section, the administrator of the scheme shall be charged to income tax under Case IV of Schedule D and, subject to *subsection (7)*, the rate of the tax shall be 25 per cent; but, in the case of any repayment under a statutory scheme established under a public statute, the administrator of the scheme shall be entitled to deduct the tax chargeable in respect of that repayment from the amount of that repayment.

(6) The tax shall be charged on the amount paid or, if the administrator is entitled under the rules of the relevant scheme or otherwise to deduct the tax before payment, on the amount before deduction of tax, and the amount so charged to tax shall not be treated as income for any other purpose of the Income Tax Acts.

(7) (*a*) The Minister for Finance may by order from time to time increase or decrease the rate of tax under *subsection (5)*.

(*b*) Every order under *paragraph (a)* shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the order is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Charge to income tax: commutation of entire pension.

[FA72 s22(1) to (4); FA92 s6(c)]

781.—(1) Where—

(*a*) a scheme which is or has at any time been an approved scheme, or

(*b*) a statutory scheme established under a public statute,

contains a rule allowing in special circumstances a payment in commutation of an employee's entire pension, and any pension is commuted, whether wholly or not, under the rule, tax shall be charged on the amount by which the sum receivable exceeds—

(i) the largest sum which would have been receivable in commutation of any part of the pension if the scheme had contained a rule providing that the aggregate value of the relevant benefits payable to an employee on or after retirement, excluding any pension which was not commutable, should not exceed three-eightieths of the employee's final remuneration for each year of service up to a maximum of 40 years, or

(ii) the largest sum which would have been receivable in commutation of any part of the pension under any rule of the scheme authorising the commutation of part (but not the whole) of the pension, or which would have been so receivable but for those circumstances,

whichever gives the lesser amount chargeable to tax.

(2) This section shall not apply where the employee's employment was carried on outside the State. PT.30 S.781

(3) Where any amount is chargeable to tax under this section, the administrator of the scheme shall be charged to income tax under Case IV of Schedule D on that amount and, subject to *subsection (6)* of *section 780* which shall apply as it applies to tax chargeable under that section, the rate of tax shall be 10 per cent.

(4) In applying *paragraph (i)* or *(ii)* of *subsection (1)*—

(*a*) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Revenue Commissioners in applying *section 772*, and

(*b*) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules of the scheme at the date of the cesser.

Charge to tax: repayments to employer.

[FA72 s23]

782.—(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme, then—

(*a*) if the scheme relates to a trade or profession carried on by the employer, the payment shall be treated for the purposes of the Tax Acts as a receipt of that trade or profession receivable when the payment is due or on the last day on which the trade or profession is carried on by the employer, whichever is the earlier;

(*b*) if the scheme does not relate to such a trade or profession, the employer shall be charged to tax on the amount of the payment under Case IV of Schedule D, but only in proportion to the extent that the payment represents contributions by the employer under the scheme which were allowable as deductions for tax purposes.

(2) This section shall not apply to a payment which was due before the scheme became an exempt approved scheme.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

CHAPTER 2

Retirement annuities

Interpretation and general (*Chapter 2*).

[ITA67 s195B(3) and (6), s235(6) to (9) and s238(3) and (4); FA69 s65(1) and Sch5 PtI; FA72 Sch1 PtIII par4; FA93 s10(1); FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par 5(3)]

783.—(1) (*a*) In this section—

''director'' means—

(i) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(ii) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person,

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(iii) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person who is or has been a director;

''employee'', in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is or has been an employee;

''investment company'' means a company the income of which consists mainly of investment income;

''investment income'', in relation to a company, means income which, if the company were an individual, would not be earned income;

''proprietary director'' means a director of a company who is either the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

''proprietary employee'', in relation to a company, means an employee who is the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company;

''sponsored superannuation scheme'' means a scheme or arrangement relating to service in particular offices or employments and having for its object or one of its objects the making of provision in respect of persons serving in those offices or employments against—

(i) future retirement or partial retirement,

(ii) future termination of service through death or disability, or

(iii) similar matters,

being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement).

(*b*) For the purposes of the definitions of ''proprietary director'' and ''proprietary employee'', ordinary share capital which is owned or controlled as is specified in those definitions by a person, being a spouse or an infant child of a director or employee,

or by the trustee of a trust for the benefit of a person or persons, being or including any such person or such director or employee, shall be deemed to be owned or controlled by such director or employee and not by any other person.

(*c*) For the purposes of the definition of ''sponsored superannuation scheme'', a person shall be treated as bearing by reason of his or her service the cost of any payment made or agreed to be made in respect of his or her service if that payment or the agreement to make it is treated under the Income Tax Acts as increasing the person's income or would be so treated if he or she were chargeable to tax under Schedule E in respect of his or her emoluments from that service.

(2) (*a*) For the purposes of this Chapter, an office or employment shall be a pensionable office or employment only if service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death before the age of 70 years or some lower age or disability before the age of 70 years or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the State or the holder is chargeable to tax in respect of the office or employment.

(*b*) For the purposes of *paragraph (a)*, service in an office or employment shall not be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he or she does not) participate in the scheme by exercising or refraining from exercising an option open to him or her by virtue of that service.

(3) For the purposes of this Chapter but subject to *subsection (4)*, ''relevant earnings'', in relation to an individual, means any income of the individual chargeable to tax for the year of assessment in question, being either—

(*a*) income arising in respect of remuneration from an office or employment of profit held by the individual, other than a pensionable office or employment,

(*b*) income from any property which is attached to or forms part of the emoluments of any such office or employment of profit held by the individual, or

(*c*) income which is chargeable under Schedule D and is immediately derived by the individual from the carrying on or exercise by the individual of his or her trade or profession either as an individual or, in the case of a partnership, as a partner personally acting in the partnership;

but does not include any remuneration from an investment company of which the individual is a proprietary director or a proprietary employee.

(4) For the purposes of this Chapter, the relevant earnings of an individual shall not be treated as the relevant earnings of his or her

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spouse, notwithstanding that the individual's income chargeable to tax is treated as his or her spouse's income.

(5) The Revenue Commissioners may make regulations prescribing the procedure to be adopted in giving effect to this Chapter in so far as such procedure is not otherwise provided for and, without prejudice to the generality of the foregoing, may by such regulations—

(*a*) prescribe the manner and form in which claims for relief from or repayment of tax are to be made,

(*b*) prescribe the time limit for the making of any such claim,

(*c*) require the trustees or other persons having the management of an approved trust scheme to deliver from time to time such information and particulars as the Revenue Commissioners may reasonably require for the purposes of this Chapter, and

(*d*) apply for purposes of this Chapter or of the regulations any provision of the Income Tax Acts (with or without modifications).

(6) Where any person, for the purpose of obtaining for that person or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.

Retirement annuities: relief for premiums.

[ITA67 s235(1) to (5) and (10); FA74 s65]

784.—(1) Where an individual—

(*a*) is (or but for an insufficiency of profits or gains would be) chargeable to tax in respect of relevant earnings from any trade, profession, office or employment carried on or held by him or her, and

(*b*) pays a premium or other consideration under an annuity contract for the time being approved by the Revenue Commissioners as being a contract by which the main benefit secured is a life annuity for the individual in his or her old age or under a contract for the time being approved under *section 785* (in this Chapter referred to as a ''qualifying premium''),

relief from income tax may be given in respect of the qualifying premium under *section 787*.

(2) (*a*) Subject to *subsection (3)*, the Revenue Commissioners shall not approve a contract unless it appears to them to satisfy the following conditions—

(i) that it is made by the individual with a person lawfully carrying on in the State the business of granting annuities on human life,

(ii) that it includes provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment, and

(iii) that it does not—

(I) provide for the payment by that person during the life of the individual of any sum except sums payable by means of annuity to the individual,

(II) provide for the annuity payable to the individual to commence before the individual attains the age of 60 years or after he or she attains the age of 70 years,

(III) provide for the payment by that person of any other sums except sums payable by means of annuity to the individual's widow or widower and any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower, are payable to the individual's personal representatives by means of return of premiums, reasonable interest on premiums or bonuses out of profits,

(IV) provide for the annuity, if any, payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual, or

(V) provide for the payment of any annuity otherwise than for the life of the annuitant.

(*b*) Notwithstanding *paragraph (a)*, the contract may provide for the payment to the individual, at the time the annuity commences to be payable, of a lump sum by means of commutation of part of the annuity not exceeding 25 per cent of the value of the annuity if the individual elects, at or before the time when the annuity first becomes payable to him or her, to be paid the lump sum.

(3) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve a contract otherwise satisfying the conditions referred to in *subsection (2)*, notwithstanding that the contract provides for one or more of the following matters—

(*a*) the payment after the individual's death of an annuity to a dependant, not being the widow or widower of the individual;

(*b*) the payment to the individual of an annuity commencing before he or she attains the age of 60 years, where the annuity is payable on the individual becoming permanently incapable through infirmity of mind or body of carrying on his or her own occupation or any occupation of a similar nature for which he or she is trained or fitted;

(*c*) where the individual's occupation is one in which persons customarily retire before attaining the age of 60 years, the annuity to commence before the individual attains that age (but not before he or she attains the age of 50 years);

(*d*) where the individual's occupation is one in which persons customarily retire after attaining the age of 70 years, the annuity to commence after the individual attains that age (but not after he or she attains the age of 80 years);

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(*e*) the annuity payable to any person to continue for a term certain (not exceeding 10 years) notwithstanding his or her death within that term, or the annuity payable to any person to terminate, or be suspended, on marriage (or remarriage) or in other circumstances;

(*f*) in the case of an annuity which is to continue for a term certain, the annuity to be assignable by will and, in the event of any person dying entitled to the annuity, the annuity to be assignable by his or her personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy or to an appropriation of the annuity to a legacy or to a share or interest in the estate.

(4) *Subsections (1)* to *(3)* shall apply in relation to a contribution under a trust scheme or part of a trust scheme approved by the Revenue Commissioners as they apply in relation to a premium under an annuity contract so approved, with the modification that for the condition in *subsection (2)(a)(i)* there shall be substituted a condition that the scheme (or the part of the scheme)—

(*a*) is established under the law of and administered in the State,

(*b*) is established for the benefit of individuals engaged in or connected with a particular occupation (or one or other of a group of occupations) and for the purpose of providing retirement annuities for those individuals with or without subsidiary benefits for their families or dependants, and

(*c*) is so established under irrevocable trusts by a body of persons comprising or representing the majority of the individuals so engaged in the State,

and with the necessary modifications of other references to the contract or the person with whom it is made, and exemption from income tax shall be allowed in respect of income derived from investments or deposits of any fund maintained for the purpose referred to in *paragraph (b)* under a scheme or part of a scheme for the time being approved under this subsection.

(5) The Revenue Commissioners may at any time, by notice in writing given to the persons by and to whom premiums are payable under any contract for the time being approved under this section or to the trustees or other persons having the management of any trust scheme so approved, withdraw that approval on such grounds and from such date (including a date before the date of the notice) as may be specified in the notice and, where any approval is so withdrawn, there shall be made such assessments as may be appropriate for the purpose of withdrawing any reliefs given under this Chapter consequent on the approval.

(6) Nothing in sections 4 and 6 of the Policies of Assurance Act, 1867, shall be taken to apply to any contract approved under this section.

Approval of contracts for dependants or for life assurance.

[ITA67 s235A(1) to (6); FA74 s66]

785.—(1) The Revenue Commissioners may approve for the purposes of this Chapter a contract made by an individual with a person (in *subsection (2)* referred to as ''the insurer'') lawfully carrying on in the State the business of granting annuities on human life if—

(*a*) the main benefit secured by the contract is the provision of an annuity for the wife or husband of the individual or for any one or more dependants of the individual, or

(*b*) the sole benefit secured by the contract is the provision of a lump sum on the death of the individual before he or she attains the age of 70 years (or any greater age approved under *section 784(3)(d)*), being a lump sum payable to the individual's personal representatives. Pt.30 S.785

(2) The Revenue Commissioners shall not approve a contract made by an individual with the insurer under *subsection (1)(a)* unless it appears to them to satisfy the following conditions—

(*a*) that any annuity payable to the wife or husband or dependant of the individual commences on the death of the individual;

(*b*) that any annuity payable under the contract to the individual commences at a time after the individual attains the age of 60 years and, unless the individual's annuity is one to commence on the death of a person to whom an annuity would be payable under the contract if that person survived the individual, cannot commence after the time when the individual attains the age of 70 years (or any greater age approved under *section 784(3)(d)*);

(*c*) that the contract does not provide for the payment by the insurer of any sum, other than any annuity payable to the individual's wife or husband or dependant or to the individual except, in the event of no annuity becoming payable under the contract, any sums payable to the individual's personal representatives by means of return of premiums, reasonable interest on premiums or bonuses out of profits;

(*d*) that the contract does not provide for the payment of any annuity otherwise than for the life of the annuitant;

(*e*) that the contract provides that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(3) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve a contract under *subsection (1)(a)*, notwithstanding that in one or more respects it does not appear to them to satisfy the conditions specified in *subsection (2)*.

(4) *Subsections (2)* and *(3)* of *section 784* shall not apply to the approval of a contract under this section.

(5) The Revenue Commissioners may approve a trust scheme or part of a trust scheme otherwise satisfying the conditions specified in *paragraphs (a)* to *(c)* of *section 784(4)*, notwithstanding that its main purpose is to provide annuities for the wives, husbands and dependants of the individuals, or lump sums payable to the individuals' personal representatives on death, and—

(*a*) *subsections (1)* to *(4)* shall apply with any necessary modifications in relation to such approval,

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(*b*) this Chapter shall apply to the scheme or part of the scheme when so approved as it applies to a contract approved under this section, and

(*c*) the exemption from income tax provided in *section 784(4)* shall apply to the scheme or part of the scheme when so approved.

(6) Except where otherwise provided in this Chapter, any reference in the Income Tax Acts to a contract, scheme or part of a scheme approved under *section 784* shall include a reference to a contract, scheme or part of a scheme approved under this section.

Approval of certain other contracts.

[FA79 s28(1) to (3)]

786.—(1) The Revenue Commissioners may, if they think fit and subject to any conditions they think proper to impose, approve an annuity contract under *section 784*, notwithstanding that the contract provides that the individual by whom it is made may require a sum representing the value of his or her accrued rights under the contract—

(*a*) to be paid by the person with whom it is made to such other person as the individual may specify, and

(*b*) to be applied by such other person in payment of the premium or other consideration under an annuity contract made between the individual and that other person and approved by the Revenue Commissioners under that section,

if the first-mentioned contract is otherwise to be approved by the Revenue Commissioners under that section.

(2) References in *subsection (1)* to the individual by whom a contract is made include references to any widow, widower or dependant having accrued rights under the contract.

(3) Where, in accordance with a provision of the kind referred to in *subsection (1)* of an annuity contract approved under *section 784* or a corresponding provision of a contract approved under *section 785(1)(a)*, a sum representing the value of accrued rights under one contract (in this subsection referred to as ''the original contract'') is paid by means of premium or other consideration under another contract (in this subsection referred to as ''the substituted contract''), any annuity payable under the substituted contract shall be treated as earned income of the annuitant to the same extent that an annuity under the original contract would have been so treated.

Nature and amount of relief for qualifying premiums.

[ITA67 s236(1) to (2B), (3) to (9) and (11), s238(1) and (2); F(MP)A68 s3(2) and Sch PtI; FA74 s67(1) and (2); FA75 s33(2) and Sch1 PtII; FA78 s4; FA90 s27(1); FA96 s13(a)]

787.—(1) For the purposes of relief under this section, an individual's relevant earnings shall be those earnings before giving effect to any deduction to be made from those earnings in respect of a loss or in respect of a capital allowance (within the meaning of *section 2*), and references to income in this section (other than references to total income) shall be construed similarly.

(2) For the purposes of this section, ''net relevant earnings'', in relation to an individual and subject to *subsections (3)* to *(5)*, means the amount of the individual's relevant earnings for the year of assessment in question less the amount of any deductions to be made from the relevant earnings in computing the individual's total income for that year, being either—

(*a*) deductions in respect of payments made by the individual, or

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(*b*) deductions in respect of losses or of such allowances mentioned in *subsection (1)*, being losses or allowances arising from activities, profits or gains of which would be included in computing relevant earnings of the individual or of the individual's spouse for the year of assessment.

(3) Where in any year of assessment for which an individual claims and is allowed relief under this section there is to be made in computing the total income of the individual or of the individual's spouse a deduction in respect of any such loss or allowance of the individual referred to in *subsection (2)(b)*, and the deduction or part of it is to be so made from income other than relevant earnings, then, the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment and shall be deducted as far as may be from those of the following year, whether or not the individual claims or is entitled to claim relief under this section for that year, and in so far as it cannot be so deducted, then from those of the next year, and so on.

(4) Where an individual's income for any year of assessment consists partly of relevant earnings and partly of other income, then, as far as may be, any deductions to be made in computing the individual's total income, and which may be treated in whole or in part either as made from relevant earnings or as made from other income, shall be treated for the purposes of this section as being made from those relevant earnings in so far as they are deductions in respect of any such loss referred to in *subsection (2)(b)* and otherwise as being made from that other income.

(5) An individual's net relevant earnings for any year of assessment shall be computed without regard to any relief to be given for that year under this section either to the individual or to the individual's spouse.

(6) Where relief is to be given under this section in respect of any qualifying premium paid by an individual, the amount of that premium shall, subject to this section, be deducted from or set off against the individual's relevant earnings for the year of assessment in which the premium is paid.

(7) Where in relation to a year of assessment a qualifying premium is paid after the end of the year of assessment but on or before the 31st day of January in the year following the year of assessment, the premium may, if the individual so elects on or before that date, be treated for the purposes of this section as paid in the earlier year (and not in the year in which it is paid); but where—

(*a*) the amount of that premium, together with any qualifying premiums paid by the individual in the year to which the assessment relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of the reduction which may be made under this section in the individual's relevant earnings for that year, or

(*b*) the amount of that premium itself exceeds the increase in that maximum amount which is due to taking into account the income on which the assessment is made,

the election shall have no effect as respects the excess.

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(8) Subject to this section, the amount which may be deducted or set off in any year of assessment (whether in respect of one or more qualifying premiums and whether or not including premiums in respect of a contract approved under *section 785*) shall not be more than—

(*a*) in the case of an individual who at any time during the year of assessment was of the age 55 years or over, 20 per cent, and

(*b*) in any other case, 15 per cent,

of the individual's net relevant earnings for that year, and the amount to be deducted shall to the greatest extent possible include qualifying premiums in respect of contracts approved under *section 785*.

(9) Subject to this section, the amount which may be deducted or set off in any year of assessment in respect of qualifying premiums paid under a contract approved under *section 785* (whether in respect of one or more such premiums) shall not be more than 5 per cent of the individual's net relevant earnings for that year.

(10) Where in any year of assessment a reduction or a greater reduction would be made under this section in the relevant earnings of an individual but for either or both of the following reasons—

(*a*) an insufficiency of net relevant earnings, or

(*b*) the operation of *subsection (9)* (as respects a qualifying premium paid under a contract approved under *section 785*),

the amount of the reduction which would be made but for those reasons, less the amount of any reduction which is made in that year, shall be carried forward to the next year of assessment, and shall be treated for the purposes of relief under this section as the amount of a qualifying premium paid in that next year of assessment.

(11) If and in so far as an amount once carried forward under *subsection (10)* (and treated as the amount of a qualifying premium paid in the next year of assessment) is not deducted from or set off against the individual's net relevant earnings for that year of assessment, it shall be carried forward again to the following year of assessment (and treated as the amount of a qualifying premium paid in that year of assessment), and so on for succeeding years.

(12)(*a*) In this subsection, ''individual's contract'' means an approved annuity contract, other than one approved under *section 785*.

(*b*) *Paragraphs (c)* and *(d)* shall apply for determining whether and the extent to which an amount carried forward under *subsection (10)* is to be treated as paid under an individual's contract on the one hand or a contract approved under *section 785* on the other.

(*c*) Any part of the amount carried forward which is referable to a qualifying premium paid under a contract approved under *section 785* shall, when carried forward on the first or any subsequent occasion, be treated for the purposes of this Chapter as the amount of a qualifying premium paid under a contract so approved.

(*d*) The balance, if any, of the amount shall when similarly carried forward be treated as a qualifying premium paid under an individual's contract. Pt.30 S.787

(13) Where relief under this section for any year of assessment is claimed and allowed (whether or not relief is then to be given for that year), and afterwards there is made any additional assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.

(14) Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of that payment under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

(15) Relief shall not be given under this section in respect of a qualifying premium except on a claim made to and allowed by the inspector, but any person aggrieved by any decision of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after the notification to that person of the decision, appeal to the Appeal Commissioners.

(16) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (15)* as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

CHAPTER 3

Purchased life annuities

Capital element in certain purchased annuities.

[ITA67 s239; CTA76 s140(1) and Sch2 PtI par9; FA79 s28(4); FA96 s132(1) and Sch5 PtI par1(10) and (11); FA97 s146(1) and Sch9 PtI par1(15)]

788.—(1) In this section—

''life annuity'' means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances;

''purchased life annuity'' means a life annuity granted for a consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

(2) This section shall not apply to—

(*a*) any annuity which apart from this section would be treated for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum,

(*b*) any annuity purchased under or for the purposes of any sponsored superannuation scheme within the meaning of *section 783(1)*, or any scheme approved under *section 784*, or in pursuance of any obligation imposed or offer or

invitation made under or in connection with any such scheme, or any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment,

(*c*) any annuity payable under a substituted contract within the meaning of *section 786(3)*,

(*d*) any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief from tax under *section 787*, or

(*e*) any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital).

(3) A purchased life annuity (not being of a description excepted by *subsection (2)*) shall, for the purposes of the provisions of the Income Tax Acts relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for other purposes of the Income Tax Acts in any circumstances in which a lump sum payment would be taken into account.

(4) In the case of any purchased life annuity to which this section applies—

(*a*) the capital element shall be determined by reference to the amount or value of the payments made or other consideration given for the grant of the annuity,

(*b*) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity,

(*c*) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with *subsection (5)*, and

(*d*) where *paragraph (c)* does not apply, that proportion shall be such as may be just, having regard to that paragraph and to the contingencies affecting the annuity.

(5) For the purposes of *subsection (4)*—

(*a*) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity),

(*b*) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or

value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under *paragraph (a)* accordingly, and

(*c*) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

(6) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element, if any, and has not been notified of any alteration of that decision, the notice shall be evidence until the contrary is proved as to those matters for the purpose of determining the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of the payment.

(7) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of the capital element, the amount of income tax which the person is entitled or required to deduct from the payment, or for which the person is liable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.

(8) Any person, other than a company which is within the charge to corporation tax, carrying on a business of granting annuities on human life shall be entitled to repayment of any income tax borne by that person by deduction or otherwise for any year of assessment up to the amount of income tax which, if this section had not been enacted, that person would have been entitled to deduct and retain on making payments due in that year of assessment on account of life annuities and which in accordance with this section that person has not deducted.

(9) This section shall apply to life annuities whenever purchased or commencing, and the reference to *section 787* in *subsection (2)(d)* shall be construed accordingly.

789.—(1) Any question as to whether an annuity is a purchased life annuity to which *section 788* applies, or what is the capital element in such an annuity, shall be determined by the inspector, but any person aggrieved by any decision of the inspector on any such question may appeal within the prescribed time to the Appeal Commissioners.

Supplementary provisions (*Chapter 3*).

[ITA67 s240; F(MP)A68 s3(2) and Sch PtI]

(2) Except where otherwise provided in this Chapter, the procedure to be adopted in giving effect to this Chapter shall be such as may be prescribed.

(3) The Revenue Commissioners may make regulations for prescribing anything which is to be prescribed under this Chapter, and the regulations may apply, for the purposes of this Chapter or of the regulations, any provision of the Income Tax Acts (with or without modifications), and in particular the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law.

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(4) Regulations under *subsection (3)* may in particular make provision as to the time limit for making any claim for relief from or repayment of tax under this Chapter and as to all or any of the following matters—

(*a*) the information to be given in connection with the determination of any question whether an annuity is a purchased life annuity to which *section 788* applies, or what is the capital element in an annuity, and the persons who may be required to give any such information;

(*b*) the manner of giving effect to the decision on any such question, and the making of assessments for the purpose on the person entitled to the annuity (notwithstanding anything in *section 237*);

(*c*) the extent to which any decision on any such question is to be binding and the circumstances in which it may be reviewed.

(5) Where any person, for the purpose of obtaining for that person or for any other person any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation, that person shall be liable to a penalty of £500.

CHAPTER 4

Miscellaneous

Liability of certain pensions, etc. to tax.

[ITA67 s225; FA97 s146(1) and Sch9 PtI par1(14)]

790.—Where an individual has ceased to hold an office or employment and a pension, annuity or other annual payment is paid to the individual or to the individual's widow or widower, or to the individual's child or any of the individual's relatives or dependants by the person or the heirs, executors, administrators or successors of the person under whom the individual held such office or by whom the individual was so employed, such pension, annuity or other annual payment shall, notwithstanding that it is paid voluntarily or is capable of being discontinued, be deemed to be income for the purpose of assessment of income tax and shall be assessed and charged under Schedule D or E, as the case may require.

PART 31

Taxation of Settlors, Etc., in Respect of Settled or Transferred Income

CHAPTER 1

Revocable dispositions for short periods and certain dispositions in favour of children

Income under revocable dispositions.

[ITA67 s438 and s442]

791.—(1) In this Chapter and in *paragraph 27* of *Schedule 32*, except where the context otherwise requires, ''disposition'' includes any trust, covenant, agreement or arrangement.

(2) Any income of which any person (in this subsection referred to as ''the first-mentioned person'') is able or has been able, without the consent of any other person by means of the exercise of any power of appointment, power of revocation or otherwise however by

virtue or in consequence of a disposition made directly or indirectly by the first-mentioned person, to obtain for the first-mentioned person the beneficial enjoyment shall be deemed for the purposes of the Income Tax Acts to be the income of the person who is or was able to obtain such beneficial enjoyment, and not to be the income of any other person. PT.31 S.791

(3) Where any power referred to in *subsection (2)* may be exercised by a person with the consent of the wife or husband of the person, the power shall for the purposes of *subsection (2)* be deemed to be exercisable without the consent of another person, except where the husband and wife are living apart either by agreement or under an order of a court of competent jurisdiction.

(4) Where any power referred to in *subsection (2)* is exercisable by the wife or husband of the person who made the disposition, the power shall for the purposes of *subsection (2)* be deemed to be exercisable by the person who made the disposition.

Income under dispositions for short periods.

[ITA67 s439; FA95 s13(1)(a) and (2)]

792.—(1) (*a*) In this subsection, ''relevant individual'' means an individual who is—

(i) permanently incapacitated by reason of mental or physical infirmity, or

(ii) aged 65 years or over.

(*b*) Any income which, by virtue of or in consequence of any disposition made directly or indirectly by any person (other than a disposition made for valuable and sufficient consideration), is payable to or applicable for the benefit of any other person, but excluding any income which—

(i) arises from capital of which the disponer by the disposition has divested absolutely himself or herself in favour of or for the benefit of the other person,

(ii) being payable to any university or college, being a university or college in the State, for the purpose of enabling that university or college to carry on research, is so payable for a period which is or may be 3 years or longer,

(iii) being payable to any body of persons to which *section 209* applies, is so payable for a period which is or may be 3 years or longer,

(iv) being payable to a relevant individual for the individual's own use, is so payable for a period which exceeds or may exceed 6 years, or

(v) being applicable for the benefit of a named relevant individual, is so applicable for a period which exceeds or may exceed 6 years,

shall be deemed for the purposes of the Income Tax Acts to be the income of the person, if living, by whom the disposition was made and not to be the income of any other person.

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(2) (*a*) This subsection shall apply to a disposition or dispositions of a kind or kinds referred to in *subparagraphs (ii)* to *(v)* of *subsection (1)(b)* made directly or indirectly by a person being an individual (in this subsection referred to as ''the disponer'') except in so far as, by virtue or in consequence of such disposition or dispositions, income is payable or applicable in a year of assessment, in the manner referred to in *subparagraph (iv)* or *(v)* of that subsection, to or for the benefit of an individual referred to in *subsection (1)(a)(i)*.

(*b*) Notwithstanding *subsection (1)*, in relation to the disponer, any income which—

(i) is payable or applicable in a year of assessment by virtue or in consequence of a disposition or dispositions to which this subsection applies, and

(ii) is in excess of 5 per cent of the total income of the disponer for the year of assessment,

shall be deemed for the purposes of the Income Tax Acts to be the income of the disponer, if living, and not to be the income of any other person.

(*c*) Where *paragraph (b)* applies in relation to the disponer, for the purpose of determining for income tax purposes the amount of income which remains the income of persons other than the disponer for a year of assessment by virtue or in consequence of a disposition or dispositions to which this subsection applies, the aggregate of the income so remaining shall be apportioned amongst those other persons in proportion to their entitlements under such disposition or dispositions for that year.

(3) (*a*) In this subsection, ''fund'' means a fund—

(i) held on irrevocable trusts under the law of the State,

(ii) administered in the State, and

(iii) having for its sole purpose the granting of financial or other aid to universities, colleges or schools in the State in order to assist such universities, colleges or schools to teach any one or more of the natural sciences.

(*b*) The reference in *subsection (1)(b)* to any university or college, being a university or college in the State, for the purpose of enabling that university or college to carry on research shall include references to income payable—

(i) to any university, college or school, being a university, college or school in the State, for the purpose of assisting such university, college or school to teach any one or more of the natural sciences, or

(ii) to a fund within the meaning of this subsection.

(4) As respects the year of assessment 1997-98, this section shall apply subject to *paragraph 27* of *Schedule 32* in respect of a disposition to which that paragraph applies by a person in so far as, by virtue or in consequence of such a disposition, income is payable in

that year of assessment to or for the benefit of an individual to whom that paragraph applies. Pt.31 S.792

793.—(1) Where by virtue of *section 792* any income tax becomes chargeable on and is paid by the person by whom the disposition was made, that person shall be entitled—

Recovery of tax from trustee and payment to trustee of excess tax recoupment.

[ITA67 s441; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 Pt1 par1(28)]

(*a*) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid, and

(*b*) for that purpose to require the Revenue Commissioners to furnish to that person a certificate specifying the amount of the income in respect of which that person has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be evidence until the contrary is proved of the matters of fact stated in that certificate.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which that person would but for *section 792* have been entitled, an amount equal to the excess shall be paid by that person to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition or, where there are 2 or more such persons, shall be apportioned among those persons as the case may require.

(3) Where any question arises as to the amount of any payment or as to any apportionment to be made under *subsection (2)*, that question shall be decided by the Appeal Commissioners whose decision on that question shall be final.

(4) Any income which is deemed by virtue of this Chapter to be the income of any person shall be deemed to be the highest part of that person's income.

CHAPTER 2

Settlements on children generally

794.—(1) In this Chapter—

Interpretation and application (*Chapter 2*).

[ITA67 s443(2), (3) and (5), s445 and s447; FA95 s12(1)(a)(ii) and (c)(i) and (ii)]

''income'' (except where in *sections 795(1)*, *796(2)(b)* and *subsections (4)* and *(5)* of *section 797* it is immediately preceded by ''as'' or ''that person's'' and except also in *section 798*) includes any income chargeable to income tax by deduction or otherwise and any income which would have been so chargeable if it had been received in the State by a person resident or ordinarily resident in the State;

''settlement'' includes any disposition, trust, covenant, agreement or arrangement, and any transfer of money or other property or of any right to money or other property.

(2) This Chapter shall apply to every settlement wherever and whenever made or entered into.

(3) This Chapter shall not apply in relation to any income arising under a settlement in any year of assessment for which the settlor is not chargeable to income tax as a resident in the State, and references in this Chapter to income shall be construed accordingly.

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(4) This Chapter shall not apply to any income which, by virtue or in consequence of a settlement and during the life of the settlor, is in any year of assessment paid to or for the benefit of a minor, not being a child of the settlor, if such minor is permanently incapacitated by reason of mental or physical infirmity.

(5) For the purposes of this Chapter, the following provisions shall apply in relation to the construction of ''irrevocable instrument'':

(*a*) an instrument shall not be an irrevocable instrument if the trusts of the instrument provide for all or any one or more of the following matters—

(i) the payment or application to or for the settlor for the settlor's own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of a person (in this paragraph referred to as a ''beneficiary'') to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,

(ii) the payment or application during the life of the settlor to or for the husband or wife of the settlor for his own or her own benefit of any capital or income or accumulations of income in any circumstances whatever during the life of any beneficiary,

(iii) the termination of the trusts of the instrument by the act or on the default of any person, and

(iv) the payment by the settlor of a penalty in the event of the settlor failing to comply with the instrument;

(*b*) an instrument shall not be prevented from being an irrevocable instrument by reason only that the trusts of the instrument include any one or more of the following provisions—

(i) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, on the bankruptcy of a person (in this paragraph referred to as a ''beneficiary'') to or for the benefit of whom any income or accumulations of income is or are or may be payable or applicable under the trusts of the instrument,

(ii) a provision under which any capital or income or accumulations of income will or may become payable to or applicable for the benefit of the settlor or the husband or wife of the settlor, in the event of any beneficiary making an assignment of or charge on such capital or income or accumulations of income, and

(iii) a provision for the termination of the trusts of the instrument in such circumstances or manner that such termination would not, during the life of any beneficiary, benefit any person other than that beneficiary or that beneficiary's husband, wife or issue;

(*c*) ''irrevocable instrument'' includes instruments whenever made. PT.31 S.794

Income settled on children.

[ITA67 s443(1); FA95 s12(1)(a)(i) and (c)]

795.—(1) Where, by virtue or in consequence of a settlement and during the life of the settlor, any income is in any year of assessment paid to or for the benefit of a person, such income shall, if at the time of payment such person is a minor, be treated for the purposes of the Income Tax Acts as income of the settlor for that year and not as income of any other person.

(2) For the purposes of this Chapter, but subject to *section 796*—

(*a*) income which, by virtue or in consequence of a settlement to which this Chapter applies, is so dealt with that it or assets representing it will or may become payable or applicable to or for the benefit of a person in the future (whether on the fulfilment of a condition, or on the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that person, and

(*b*) any income dealt with in the manner referred to in *paragraph (a)* which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular person or persons shall be deemed to be paid in equal shares to or for the benefit of each of the persons to or for the benefit of whom or any of whom the income or assets representing it will or may become payable or applicable.

Irrevocable instruments.

[ITA67 s444 and s447; FA71 s16(2) and (3); FA95 s12(1)(b)]

796.—(1) In this section, ''property'' does not include any annual or other periodical payment secured by the covenant of the settlor, or by a charge made by the settlor on the whole or any part of the settlor's property or the whole or any part of the settlor's future income, or by both such covenant and such charge.

(2) Where by virtue of an irrevocable instrument property is vested in or held by trustees on such trusts that in any year of assessment *section 795* would but for this section apply to the income of such property, the following provisions shall apply:

(*a*) *section 795* shall not apply—

(i) in respect of any part of such income which is in that year of assessment accumulated for the benefit of a person, or

(ii) in respect of income arising in that year of assessment from accumulations of income referred to in *subparagraph (i)*;

(*b*) whenever in any year of assessment any sum whatever is paid under the trusts of such irrevocable instrument out of—

(i) such property,

(ii) the accumulations of the income of such property,

(iii) the income of such property, or

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(iv) the income of those accumulations,

to or for the benefit of a person who at the time of payment is a minor, such sum shall, subject to the limitation in *paragraph (c)*, be deemed for the purposes of this Chapter to be paid as income;

(*c*) *paragraph (b)* shall not apply to so much of such sum as is equal to the amount by which the aggregate of such sum and all other sums (if any) paid after the 5th day of April, 1937, under the trusts of such irrevocable instrument to or for the benefit of that person or any other person (being a person who at the time of payment was a minor) exceeds the aggregate amount of the income arising after the 5th day of April, 1937, from such property together with the income arising after that date from those accumulations;

(*d*) for the purposes of *paragraph (c)*, the reference in that paragraph to another sum paid to or for the benefit of a person who at the time of payment was a minor shall be construed, in relation to a payment to which this paragraph applies of any such sum, as a reference to a sum so paid to or for the benefit of a person who at the beginning of the year of assessment in which such other sum was paid was a minor;

(*e*) *paragraph (d)* shall apply to any payment of any such sum—

(i) made before the 6th day of April, 1971, or

(ii) in the case of a payment to or for the benefit of a child born after the 6th day of April, 1971, and so made by virtue or in consequence of a settlement made before the 28th day of April, 1971, made in the year 1971-72;

(*f*) for the purposes of *paragraphs (c)* and *(d)*, references in those paragraphs to a person being at a particular time a minor shall, where that time is before the 6th day of April, 1986, be construed as references to a person who at that time was under the age of 21 years and was not or had not been married.

Recovery of tax from trustee and payment to trustee of excess tax recoupment.

[ITA67 s446; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; FA97 s146(1) and Sch9 PtI par1(29)]

797.—(1) Where by virtue of this Chapter any income tax becomes chargeable on and is paid by a settlor, such settlor shall be entitled—

(*a*) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid, and

(*b*) for that purpose to require the Revenue Commissioners to furnish to such settlor a certificate specifying the amount of the income in respect of which such settlor has so paid tax and the amount of the tax so paid, and every certificate so furnished shall be evidence until the contrary is proved of the matters of fact stated in the certificate.

(2) Where any person obtains in respect of any allowance or relief a repayment of income tax in excess of the amount of the repayment to which that person would but for this Chapter have been entitled, an amount equal to the excess shall be paid by that person to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement and, where there are 2 or more such trustees or other persons, in such proportions as the circumstances may require. Pt.31 S.797

(3) Where any question arises as to the amount of any payment or as to any apportionment to be made under *subsection (2)*, that question shall be decided by the Appeal Commissioners whose decision on that question shall be final.

(4) Any income which by virtue of this Chapter is treated as income of any person shall be deemed to be the highest part of that person's income.

(5) No repayment shall be made under *paragraph 21* of *Schedule 32* on account of tax paid in respect of any income which has by virtue of this Chapter been treated as income of a settlor.

Transfer of interest in trade to children.

[ITA67 s448(1), (3) and (4)]

798.—(1) Where by any means whatever (including indirect means or means consisting of a series of operations and whenever adopted) a trade, which at any time before the adoption of such means was carried on by any person solely or in partnership, becomes a trade carried on by one or more than one child of such person or by means of a partnership in which such person and one or more than one child of such person are partners, the following provisions shall apply:

(*a*) such means shall for the purposes of this Chapter be deemed to constitute a settlement as respects which such person shall be deemed to be the settlor;

(*b*) the profits or gains arising from the trade after the adoption of such means, in so far as they arise to one or, as the case may be, more than one child of such person shall for the purposes of this Chapter be deemed to be the same income as would have arisen to such person had such means not been adopted;

(*c*) ''income'' where it first occurs in *section 795* shall be deemed to include those profits or gains in so far as they arise to one or more than one child of such person.

(2) The amount of the income of a person from the profits or gains of a trade deemed by virtue of *subsection (1)* to be income of another person shall, if the first-mentioned person is engaged actively in the carrying on of the trade, be the full amount of that income reduced by a sum (in *subsection (3)* referred to as ''the appropriate sum'') equal to the amount which would have been allowed in computing those profits or gains in respect of the first-mentioned person if that person, instead of being a person engaged in the carrying on of the trade, had been a person employed by a person or persons carrying on the trade.

(3) The appropriate sum shall be deemed to be profits or gains arising to the first-mentioned person referred to in *subsection (2)* from the exercise of an office or employment within the meaning of Schedule E.

PART 32

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION AND SURCHARGE ON CERTAIN INCOME OF TRUSTEES

CHAPTER 1

Estates of deceased persons in course of administration

Interpretation (*Chapter 1*).

[ITA67 s450; CTA76 s140 and Sch2 PtI par23; FA97 s146(1) and Sch9 PtI par1(30)]

799.—(1) (*a*) In this Chapter—

''administration period'' has the meaning assigned to it by *section 800(1)*;

''charges on residue'', in relation to the estate of a deceased person, means the following liabilities properly payable out of the estate and interest payable in respect of those liabilities—

(i) funeral, testamentary, and administration expenses and debts,

(ii) general legacies, demonstrative legacies and annuities, and

(iii) any other liabilities of the deceased person's personal representatives as such,

but, in the case of any such liabilities which, as between persons interested under a specific disposition or in a legacy referred to in *paragraph (ii)* or in an annuity and persons interested in the residue of the estate, fall exclusively or primarily on the property that is the subject of the specific disposition or on the legacy or annuity, includes only such part (if any) of those liabilities as fall ultimately on the residue;

''foreign estate'', as regards any year of assessment, means an estate other than an Irish estate;

''Irish estate'', as regards any year of assessment, means an estate the income of which comprises only income which either has borne Irish income tax by deduction or in respect of which the personal representatives are directly assessable to Irish income tax, other than an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from Irish income tax by reference to the fact that they are not resident or not ordinarily resident in the State;

''personal representative'', in relation to the estate of a deceased person, means his or her personal representative within the meaning of section 3(1) of the Succession Act, 1965, and includes any person who takes possession of or intermeddles with the property of the deceased and also includes any person having, in relation to the deceased, under the law of another country any functions corresponding to the functions for administration purposes under the law of the State of a personal representative within the

meaning of that section, and references to personal representatives as such shall be construed as references to personal representatives in their capacity as having such functions;

"specific disposition" means a specific devise or bequest made by a testator, and includes any disposition having, whether by virtue of any enactment or otherwise, under the law of the State or of another country an effect similar to that of a specific devise or bequest under the law of the State.

(*b*) For the purposes of this Chapter—

(i) references to the aggregate income of the estate of a deceased person for any year of assessment shall be construed, subject to *section 439(2)*, as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(I) any such income chargeable to Irish income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year, and

(II) any such income which would have been so chargeable if it had arisen in the State to a person resident and ordinarily resident in the State, such income being computed at the full amount of that income actually arising during that year, less such deductions as would have been allowable if it had been charged to Irish income tax, but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased;

(ii) references to sums paid include references to assets transferred or appropriated by a personal representative to himself or herself and to debts set off or released;

(iii) references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself or herself is subsisting on the completion of the administration and to debts as to which an obligation to release is set off, or a right of a personal representative so to do in his or her own favour, is then subsisting;

(iv) references to amount in relation to assets referred to in *subparagraphs (ii)* and *(iii)* shall be construed as references to the value of those assets at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts, as references to the amount of such debts.

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(2) For the purposes of this Chapter—

(*a*) a person shall be deemed to have an absolute interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, if and so long as the capital of the residue or of that part of the residue, as the case may be, would if the residue had been ascertained be properly payable to the person or to another in the person's right for the person's benefit, or is properly so payable, whether directly by the personal representatives, or indirectly through a trustee or other person;

(*b*) a person shall be deemed to have a limited interest in the residue of the estate of a deceased person, or in a part of the residue of that estate, during any period (other than a period during which the person has an absolute interest in the residue or in that part of the residue, as the case may be) where the income of the residue or of that part of the residue, as the case may be, for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to the person, or to another person in the person's right, for the person's benefit, whether directly by the personal representatives, or indirectly through a trustee or other person;

(*c*) real estate included (either by a specific or a general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of the testator's estate and not to be the subject of a specific disposition.

(3) Where different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Chapter shall apply in relation to each such part with the substitution—

(*a*) for references to the estate of references to that part of the estate, and

(*b*) for references to the personal representatives of the deceased as such of references to those personal representatives in their capacity as having the functions referred to in the definition of ''personal representative'' in relation to that part of the estate.

Limited interest in residue.

[ITA67 s451; F(MP)A68 s3(5) and Sch Pt IV; FA74 s11 and Sch1 PtII]

800.—(1) This section shall apply in relation to a person who, during the period commencing on the death of a deceased person and ending on the completion of the administration of the estate of the deceased person (in this Chapter referred to as ''the administration period'') or during a part of that period, has a limited interest in the residue of that estate or in a part of the residue of that estate.

(2) When any sum has been paid during the administration period in respect of that limited interest, the amount of that sum shall, subject to *subsection (3)*, be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last year of assessment in which that interest was subsisting.

(3) On the completion of the administration of the estate—

(*a*) the aggregate amount of all sums paid before or payable on the completion of the administration in respect of that limited interest shall be deemed to have accrued due to that person from day to day during the administration period or the part of that period during which that person had that interest, as the case may be, and to have been paid to that person as it accrued due,

(*b*) the amount deemed to have been paid to that person by virtue of *paragraph (a)* in any year of assessment shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for that year, and

(*c*) where the amount deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to that person as income for that year by virtue of *subsection (2)*, such adjustments shall be made as are provided in *section 804*.

(4) Any amount deemed to have been paid to that person as income for any year by virtue of this section shall—

(*a*) in the case of an Irish estate, be deemed to be income of such an amount as would after deduction of income tax at the standard rate of tax for that year be equal to the amount deemed to have been so paid and to be income that has borne income tax at that standard rate of tax;

(*b*) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid, and shall be chargeable to income tax under Case III of Schedule D as if it were income arising from securities in a place outside the State.

(5) Where—

(*a*) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to that person as income in respect of an interest in a foreign estate, and

(*b*) any part of the aggregate income of that estate for that year has borne Irish income tax by deduction or otherwise,

the income in respect of which that person has been so charged to tax shall on proof of the facts be reduced by an amount bearing the same proportion thereto as the part of that aggregate income which has borne Irish income tax bears to the whole of that aggregate income.

(6) Where relief has been given in accordance with *subsection (5)*, such part of the amount in respect of which the person has been charged to income tax as corresponds to the proportion referred to in that subsection shall for the purpose of computing the person's total income be deemed to represent income of such an amount as would after deduction of income tax at the standard rate of tax be equal to that part of the amount charged.

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Absolute interest in residue.

[ITA67 s452; CTA76 s140(1) and Sch2 PtI par24]

801.—(1) This section shall apply in relation to a person who during the administration period or a part of that period has an absolute interest in the residue of the estate of a deceased person or in a part of the residue of that estate.

(2) There shall be ascertained in accordance with *section 802* the amount of the residuary income of the estate for each whole year of assessment, and for each part of a year of assessment, during which—

(*a*) the administration period was current, and

(*b*) that person had that interest,

and the amount so ascertained in respect of any year or part of a year, or, in the case of a person having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Chapter referred to as the ''residuary income'' of that person for that year of assessment.

(3) When any sum has or any sums have been paid during the administration period in respect of that absolute interest, the amount of that sum or the aggregate amount of those sums shall, subject to *subsection (4)*, be deemed for the purposes of the Income Tax Acts to have been paid to that person as income to the extent to which, and for the year or years of assessment for which, that person would have been treated for those purposes as having received income if—

(*a*) that person had had a right to receive in each year of assessment—

(i) in the case of an Irish estate, that person's residuary income for that year less income tax for that year at the standard rate of tax, or

(ii) in the case of a foreign estate, that person's residuary income for that year,

and

(*b*) that sum or the aggregate of those sums had been available for application primarily in or towards satisfaction of those rights as they accrued and had been so applied.

(4) In the case of an Irish estate, any amount deemed to have been paid to that person as income for any year by virtue of *subsection (3)* shall be deemed to be income of such an amount as would after deduction of income tax at the standard rate of tax for that year be equal to the amount deemed to have been so paid, and to be income which has borne income tax at the standard rate of tax.

(5) On the completion of the administration of the estate—

(*a*) the amount of the residuary income of that person for any year of assessment shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for that year and, in the case of an Irish estate, shall be deemed to have borne tax by reference to the standard rate of tax, and

(*b*) where the amount deemed to have been paid to that person as income for any year by virtue of this subsection is less or greater than the amount deemed to have been paid to that person as income for that year by virtue of *subsection*

(3) or *(4)*, such adjustments shall be made as are provided in *section 804*. Pt.32 S.801

(6) In the case of a foreign estate, any amount deemed to have been paid to that person as income for any year by virtue of this section shall be deemed to be income of that amount, and shall be chargeable to income tax under Case III of Schedule D as if it were income arising from securities in a place outside the State.

(7) Where—

(*a*) a person has been charged to income tax for any year by virtue of this section in respect of an amount deemed to have been paid to that person as income in respect of an interest in a foreign estate, and

(*b*) any part of the aggregate income of that estate for that year has borne Irish income tax by deduction or otherwise,

the income in respect of which that person has been so charged to tax shall on proof of the facts be reduced by an amount bearing the same proportion thereto as the part of that aggregate income which has borne Irish income tax bears to the whole of that aggregate income.

(8) Where relief has been given in accordance with *subsection (7)*, such part of the amount in respect of which the person has been charged to income tax as corresponds to the proportion referred to in that subsection shall for the purpose of computing the person's total income be deemed to represent income of such an amount as would after deduction of income tax at the standard rate of tax be equal to that part of the amount charged.

(9) For the purposes of any charge to corporation tax to which this section is applied, the residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

Supplementary provisions as to absolute interest in residue.

[ITA67 s453]

802.—(1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—

(*a*) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate, and

(*b*) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.

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(2) (*a*) In this subsection, ''benefits received'', in relation to an absolute interest, means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest—

(i) as regards a sum paid before the completion of the administration in the case of an Irish estate, such an amount as would, after deduction of income tax at the standard rate of tax for the year of assessment in which that sum was paid, be equal to that sum or, in the case of a foreign estate, the amount of that sum, and

(ii) as regards a sum payable on the completion of the administration in the case of an Irish estate, such an amount as would, after deduction of income tax at the standard rate of tax for the year of assessment in which the administration is completed, be equal to that sum or, in the case of a foreign estate, the amount of that sum.

(*b*) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a person had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the person having that interest, that person's residuary income for each year shall be reduced for the purpose of *section 801* by an amount bearing the same proportion thereto as the deficiency bears to the aggregate for all years of that person's residuary income.

(3) In the application of *subsection (2)* to a residue or a part of a residue in which a person, other than the person having an absolute interest at the completion of the administration, had an absolute interest at any time during the administration period, the aggregates mentioned in that subsection shall be computed in relation to those interests taken together, and the residuary income of that other person shall also be subject to reduction under that subsection.

Special provisions as to certain interests.

[ITA67 s454]

803.—(1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute interest or a limited interest in the residue of that estate or in part of the residue of that estate, the personal representatives shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Chapter shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.

(2) Where different persons have successively during the administration period absolute interests in the residue of the estate of a deceased person or in a part of the residue of that estate, sums paid during that period in respect of the residue or of that part of the residue, as the case may be, shall be treated for the purpose of this Chapter as having been paid in respect of the interest of the person who first had an absolute interest in that residue or that part of that residue up to the amount of—

(*a*) in the case of an Irish estate, the aggregate for all years of that person's residuary income less income tax at the standard rate of tax, or

(*b*) in the case of a foreign estate, the aggregate for all years of that person's residuary income,

and, as to any balance up to a corresponding amount, in respect of the interest of the person who next had an absolute interest in that residue or that part of that residue, as the case may be, and so on.

(3) Where on the exercise of a discretion any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part of the administration period) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another person in that person's right, for that person's benefit, whether directly by the personal representatives or indirectly through a trustee or other person—

(*a*) the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for the purposes of the Income Tax Acts to have been paid to that person as income for the year of assessment in which it was paid, and

(*b*) *subsections (4)* to *(6)* of *section 800* shall apply in relation to an amount deemed to have been paid as income by virtue of *paragraph (a)*.

Adjustments and information.

[ITA67 s455]

804.—(1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Chapter to have been paid to any person as income for any year of assessment and—

(*a*) that amount is greater than the amount previously deemed to have been paid to that person as income for that year by virtue of this Chapter, or

(*b*) no amount has previously been so deemed to have been paid to that person as income for that year,

an assessment or additional assessment may be made on that person for that year and tax charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which that person may be entitled shall be allowed accordingly.

(2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Chapter to have been paid to any person as income for any year of assessment and that amount is less than the amount that has previously been so deemed to have been paid to that person, then—

(*a*) if an assessment has already been made on that person for that year, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Chapter which take effect on the completion of the administration, and any tax overpaid shall be repaid, and

(*b*) if—

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(i) any relief has been allowed to that person by reference to the amount previously deemed by virtue of this Chapter to have been paid to that person as income for that year, and

(ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to that person as income for that year,

the relief so given in excess may, if not otherwise made good, be charged under Case IV of Schedule D and recovered from that person accordingly.

(3) Notwithstanding anything in the Income Tax Acts, the time within which—

(*a*) an assessment or additional assessment may be made for the purposes of this Chapter,

(*b*) an assessment may be adjusted for those purposes, or

(*c*) a claim for relief may be made by virtue of this Chapter,

shall not expire before the end of the third year following the year of assessment in which the administration of the estate in question was completed.

(4) The Revenue Commissioners may by notice in writing require any person, being or having been a personal representative of a deceased person, or having or having had an absolute interest or a limited interest in the residue of the estate of a deceased person or in a part of the residue of that estate, to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.

CHAPTER 2

Surcharge on certain income of trustees

Surcharge on certain income of trustees.

[FA76 s13; FA90 s8]

805.—(1) (*a*) In this section—

''personal representative'' has the same meaning as in *section 799(1)*;

''trustees'' does not include personal representatives, but where personal representatives, on or before the completion of the administration of the estate of a deceased person, pay to trustees any sum representing income which, if the personal representatives were trustees, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the standard rate.

(*b*) This subsection shall be construed together with *Chapter 1* of this Part.

(2) This section shall apply to income arising to trustees in any year of assessment in so far as it—

(*a*) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person, whether or not the trustees have power to accumulate the income, Pt.32 S.805

(*b*) is neither, before being distributed, the income of any person other than the trustees nor treated for any purpose of the Income Tax Acts as the income of a settlor,

(*c*) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of *section 770*,

(*d*) exceeds the income applied in defraying the expenses of the trustees in that year which are properly chargeable to income, or would be so chargeable but for any express provisions of the trust, and

(*e*) is not distributed to one or more persons within that year of assessment or within 18 months after the end of that year of assessment in such circumstances that the income distributed is to be treated for the purposes of the Income Tax Acts as the income of the person or persons to whom it is distributed.

(3) (*a*) Income to which this section applies shall, in addition to being chargeable to income tax at the standard rate for the year of assessment for which it is so chargeable, be charged to an additional duty of income tax (in this section referred to as a ''surcharge'') at the rate of 20 per cent.

(*b*) A surcharge to be made on trustees under this section in respect of income arising in a year of assessment (in this subsection referred to as ''the first year of assessment'') shall—

(i) be charged on the trustees for the year of assessment in which a period of 18 months beginning immediately after the end of the first year of assessment ends, and

(ii) be treated as income tax chargeable for the year of assessment for which it is so charged.

(*c*) Subject to *subsection (4)*, the Income Tax Acts shall apply in relation to a surcharge made under this section as they apply to income tax charged otherwise than by virtue of this section.

(4) Where income in respect of which a surcharge is made is distributed, no relief from or repayment in respect of the surcharge shall be allowed or made to the person to whom the income is distributed.

(5) A notice given to trustees under any provision specified in *column 1* or *2* of *Schedule 29* may require that a return of the income arising to them shall include particulars of the manner in which the income has been applied, including particulars as to the exercise by them of any discretion and of the persons in whose favour that discretion has been so exercised.

PART 33

ANTI-AVOIDANCE

CHAPTER 1

Transfer of assets abroad

Charge to income tax on transfer of assets abroad.

[FA74 s57 preamble and (1) to (7) and (8)(a), (b), (c), (e) and (f)]

806.—(1) In this section—

''assets'' includes property or rights of any kind;

''associated operation'', in relation to any transfer, means an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets;

''benefit'' includes a payment of any kind;

''company'' means any body corporate or unincorporated association;

''transfer'', in relation to rights, includes the creation of those rights.

(2) For the purposes of this section—

(*a*) any body corporate incorporated outside the State shall be treated as if it were resident out of the State whether it is so resident or not,

(*b*) a reference to an individual shall be deemed to include the husband or wife of the individual, and

(*c*) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(3) This section shall apply for the purpose of preventing the avoidance by individuals ordinarily resident in the State of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled out of the State.

(4) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has power to enjoy (within the meaning of this section), whether forthwith or in the future, any income of a person resident or domiciled out of the State which, if it were income of that individual received by that individual in the State, would be chargeable to tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be income of that individual for the purposes of the Income Tax Acts.

(5) (*a*) In this subsection, ''capital sum'' means—

(i) any sum paid or payable by means of loan or repayment of a loan, and

(ii) any other sum paid or payable otherwise than as income, being a sum not paid or payable for full consideration in money or money's worth.

(*b*) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled out of the State shall, whether it would or would not have been chargeable to tax apart from this section, be deemed to be the income of that individual for the purposes of the Income Tax Acts.

(6) An individual shall for the purposes of this section be deemed to have power to enjoy income of a person resident or domiciled out of the State where—

(*a*) the income is in fact so dealt with by any person as to be calculated, at some point of time and whether in the form of income or not, to enure for the benefit of the individual,

(*b*) the receipt or accrual of the income operates to increase the value to the individual of any assets held by the individual or for the individual's benefit,

(*c*) the individual receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income,

(*d*) the individual has power, by means of the exercise of any power of appointment or power of revocation or otherwise, to obtain for himself or herself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or may in the event of the exercise of any power vested in any other person become entitled to the beneficial enjoyment of the income, or

(*e*) the individual is able, in any manner whatever and whether directly or indirectly, to control the application of the income.

(7) In determining whether an individual has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to the individual (whether or not the individual has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(8) *Subsections (4)* and *(5)* shall not apply where the individual shows in writing or otherwise to the satisfaction of the Revenue Commissioners—

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(*a*) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them was effected, or

(*b*) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(9) In any case where a person is aggrieved by a decision taken by the Revenue Commissioners in exercise of their functions under *subsection (8)*, the person shall be entitled to appeal to the Appeal Commissioners against the decision of the Revenue Commissioners and the Appeal Commissioners shall hear and determine the appeal as if it were an appeal against an assessment to tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

Deductions and reliefs in relation to income chargeable to income tax under *section 806*.

[FA74 s58]

807.—(1) Income tax chargeable by virtue of *section 806* shall be charged under Case IV of Schedule D.

(2) In computing the liability to income tax of an individual chargeable by virtue of *section 806*, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be income of the individual by virtue of that section had actually been received by the individual.

(3) Where an individual has been charged to income tax on any income deemed to be income of the individual by virtue of *section 806* and that income is subsequently received by the individual, it shall be deemed not to form part of the individual's income again for the purposes of the Income Tax Acts.

(4) In any case where an individual has for the purposes of *section 806* power to enjoy income of a person abroad by reason of receiving any such benefit referred to in *subsection (6)(c)* of that section, the individual shall be chargeable to income tax by virtue of that section under Case IV of Schedule D for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit, except in so far as it is shown that the benefit derives directly or indirectly from income on which the individual has already been charged to income tax for that or a previous year of assessment.

Power to obtain information.

[FA74 s59(1) to (5); FA77 s3; FA97 s146(1) and Sch9 PtI par8(2)]

808.—(1) In this section, ''settlement'' and ''settlor'' have the same meanings respectively as in *section 10*.

(2) The Revenue Commissioners or such officer as the Revenue Commissioners may appoint may by notice in writing require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of *sections 806*, *807* and *809*.

(3) The particulars which a person shall furnish under this section, if required by such a notice to do so, shall include particulars as to—

(*a*) transactions with respect to which the person is or was acting on behalf of others;

(*b*) transactions which in the opinion of the Revenue Commissioners, or of such officer as the Revenue Commissioners may appoint, it is proper that they should

investigate for the purposes of *sections 806*, *807* and *809*, notwithstanding that in the opinion of the person to whom the notice is given no liability to tax arises under those sections; Pt.33 S.808

(*c*) whether the person to whom the notice is given has taken or is taking any (and if so what) part in any (and if so what) transactions of a description specified in the notice.

(4) Notwithstanding anything in *subsection (3)*, a solicitor shall not be deemed for the purposes of *paragraph (c)* of that subsection to have taken part in a transaction by reason only that the solicitor has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by the solicitor on behalf of a client, be compellable under this section, except with the consent of the client, to do more than state that the solicitor is or was acting on behalf of a client, and specify the name and address of the client and also—

(*a*) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the State to or by any body corporate mentioned in *subsection (5)*, or in connection with any associated operation in relation to any such transfer, to specify the names and addresses of the transferor and the transferee or of the persons concerned in the associated operation, as the case may be;

(*b*) in the case of anything done by the solicitor in connection with the formation or management of any body corporate mentioned in *subsection (5)*, to specify the name and address of the body corporate;

(*c*) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled out of the State, to specify the names and addresses of the settlor and of that person.

(5) The bodies corporate referred to in *subsection (4)* are bodies corporate resident or incorporated outside the State which are, or if resident in the State would be, close companies within the meaning of *sections 430* and *431*.

(6) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any body corporate mentioned in *subsection (4)(b)* or in connection with the creation, or with the execution of the trusts, of any settlement mentioned in *subsection (4)(c)*.

809.—Where any income of any person is by virtue of the Income Tax Acts, and in particular, but without prejudice to the generality of the foregoing, by virtue of *section 806*, to be deemed to be income of any other person, that income shall not be exempt from tax either— Saver. [FA74 s60]

(*a*) as being derived from any stock or other security to which *section 43*, *47*, *49* or *50* applies, or

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(*b*) by virtue of *section 35* or *63*,

by reason of the first-mentioned person not being resident, or not being ordinarily resident, or being neither domiciled nor ordinarily resident, in the State.

Application of Income Tax Acts.

[FA74 s61]

810.—The provisions of the Income Tax Acts relating to the charge, assessment, collection and recovery of tax, to appeals against assessments and to cases to be stated for the opinion of the High Court shall apply to income tax chargeable by virtue of *section 806* subject to any necessary modifications.

CHAPTER 2

Miscellaneous

Transactions to avoid liability to tax.

[FA89 s86]

811.—(1) (*a*) In this section—

"the Acts" means—

(i) the Tax Acts,

(ii) the Capital Gains Tax Acts,

(iii) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(iv) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

(v) Part VI of the Finance Act, 1983, and the enactments amending or extending that Part, and

(vi) the statutes relating to stamp duty,

and any instruments made thereunder;

"business" means any trade, profession or vocation;

"notice of opinion" means a notice given by the Revenue Commissioners under *subsection (6)*;

"tax" means any tax, duty, levy or charge which in accordance with the Acts is placed under the care and management of the Revenue Commissioners and any interest, penalty or other amount payable pursuant to the Acts;

"tax advantage" means—

(i) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or

(ii) a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person,

including any potential or prospective amount so refundable or payable,

arising out of or by reason of a transaction, including a transaction where another transaction would not have been undertaken or arranged to achieve the results, or any part of the results, achieved or intended to be achieved by the transaction;

''tax avoidance transaction'' has the meaning assigned to it by *subsection (2)*;

''tax consequences'', in relation to a tax avoidance transaction, means such adjustments and acts as may be made and done by the Revenue Commissioners pursuant to *subsection (5)* in order to withdraw or deny the tax advantage resulting from the tax avoidance transaction;

''transaction'' means—

(i) any transaction, action, course of action, course of conduct, scheme, plan or proposal,

(ii) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and

(iii) any series of or combination of the circumstances referred to in *paragraphs (i)* and *(ii)*,

whether entered into or arranged by one person or by 2 or more persons—

(I) whether acting in concert or not,

(II) whether or not entered into or arranged wholly or partly outside the State, or

(III) whether or not entered into or arranged as part of a larger transaction or in conjunction with any other transaction or transactions.

(*b*) In *subsections (2)* and *(3)*, for the purposes of the hearing or rehearing under *subsection (8)* of an appeal made under *subsection (7)* or for the purposes of the determination of a question of law arising on the statement of a case for the opinion of the High Court, the references to the Revenue Commissioners shall, subject to any necessary modifications, be construed as references to the Appeal Commissioners or to a judge of the Circuit Court or, to the extent necessary, to a judge of the High Court, as appropriate.

(2) For the purposes of this section and subject to *subsection (3)*, a transaction shall be a ''tax avoidance transaction'' if having regard to any one or more of the following—

(*a*) the results of the transaction,

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(*b*) its use as a means of achieving those results, and

(*c*) any other means by which the results or any part of the results could have been achieved,

the Revenue Commissioners form the opinion that—

(i) the transaction gives rise to, or but for this section would give rise to, a tax advantage, and

(ii) the transaction was not undertaken or arranged primarily for purposes other than to give rise to a tax advantage,

and references in this section to the Revenue Commissioners forming an opinion that a transaction is a tax avoidance transaction shall be construed as references to the Revenue Commissioners forming an opinion with regard to the transaction in accordance with this subsection.

(3) (*a*) Without prejudice to the generality of *subsection (2)*, in forming an opinion in accordance with that subsection and *subsection (4)* as to whether or not a transaction is a tax avoidance transaction, the Revenue Commissioners shall not regard the transaction as being a tax avoidance transaction if they are satisfied that—

(i) notwithstanding that the purpose or purposes of the transaction could have been achieved by some other transaction which would have given rise to a greater amount of tax being payable by the person, the transaction—

(I) was undertaken or arranged by a person with a view, directly or indirectly, to the realisation of profits in the course of the business activities of a business carried on by the person, and

(II) was not undertaken or arranged primarily to give rise to a tax advantage,

or

(ii) the transaction was undertaken or arranged for the purpose of obtaining the benefit of any relief, allowance or other abatement provided by any provision of the Acts and that the transaction would not result directly or indirectly in a misuse of the provision or an abuse of the provision having regard to the purposes for which it was provided.

(*b*) In forming an opinion referred to in *paragraph (a)* in relation to any transaction, the Revenue Commissioners shall have regard to—

(i) the form of that transaction,

(ii) the substance of that transaction,

(iii) the substance of any other transaction or transactions which that transaction may reasonably be regarded as being directly or indirectly related to or connected with, and

(iv) the final outcome and result of that transaction and any combination of those other transactions which are so related or connected. Pt.33 S.811

(4) Subject to this section, the Revenue Commissioners as respects any transaction may at any time—

(*a*) form the opinion that the transaction is a tax avoidance transaction,

(*b*) calculate the tax advantage which they consider arises, or which but for this section would arise, from the transaction,

(*c*) determine the tax consequences which they consider would arise in respect of the transaction if their opinion were to become final and conclusive in accordance with *subsection (5)(e)*, and

(*d*) calculate the amount of any relief from double taxation which they would propose to give to any person in accordance with *subsection (5)(c)*.

(5) (*a*) Where the opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction becomes final and conclusive, they may, notwithstanding any other provision of the Acts, make all such adjustments and do all such acts as are just and reasonable (in so far as those adjustments and acts have been specified or described in a notice of opinion given under *subsection (6)* and subject to the manner in which any appeal made under *subsection (7)* against any matter specified or described in the notice of opinion has been finally determined, including any adjustments and acts not so specified or described in the notice of opinion but which form part of a final determination of any such appeal) in order that the tax advantage resulting from a tax avoidance transaction shall be withdrawn from or denied to any person concerned.

(*b*) Subject to but without prejudice to the generality of *paragraph (a)*, the Revenue Commissioners may—

(i) allow or disallow in whole or in part any deduction or other amount which is relevant in computing tax payable, or any part of such deduction or other amount,

(ii) allocate or deny to any person any deduction, loss, abatement, relief, allowance, exemption, income or other amount, or any part thereof, or

(iii) recharacterize for tax purposes the nature of any payment or other amount.

(*c*) Where the Revenue Commissioners make any adjustment or do any act for the purposes of *paragraph (a)*, they shall afford relief from any double taxation which they consider would but for this paragraph arise by virtue of any adjustment made or act done by them pursuant to *paragraphs (a)* and *(b)*.

(*d*) Notwithstanding any other provision of the Acts, where—

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(i) pursuant to *subsection (4)(c)*, the Revenue Commissioners determine the tax consequences which they consider would arise in respect of a transaction if their opinion that the transaction is a tax avoidance transaction were to become final and conclusive, and

(ii) pursuant to that determination, they specify or describe in a notice of opinion any adjustment or act which they consider would be, or be part of, those tax consequences,

then, in so far as any right of appeal lay under *subsection (7)* against any such adjustment or act so specified or described, no right or further right of appeal shall lie under the Acts against that adjustment or act when it is made or done in accordance with this subsection, or against any adjustment or act so made or done that is not so specified or described in the notice of opinion but which forms part of the final determination of any appeal made under *subsection (7)* against any matter specified or described in the notice of opinion.

(*e*) For the purposes of this subsection, an opinion of the Revenue Commissioners that a transaction is a tax avoidance transaction shall be final and conclusive—

(i) if within the time limited no appeal is made under *subsection (7)* against any matter or matters specified or described in a notice or notices of opinion given pursuant to that opinion, or

(ii) as and when all appeals made under *subsection (7)* against any such matter or matters have been finally determined and none of the appeals has been so determined by an order directing that the opinion of the Revenue Commissioners to the effect that the transaction is a tax avoidance transaction is void.

(6) (*a*) Where pursuant to *subsections (2)* and *(4)* the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction, they shall immediately on forming such an opinion give notice in writing of the opinion to any person from whom a tax advantage would be withdrawn or to whom a tax advantage would be denied or to whom relief from double taxation would be given if the opinion became final and conclusive, and the notice shall specify or describe—

(i) the transaction which in the opinion of the Revenue Commissioners is a tax avoidance transaction,

(ii) the tax advantage or part of the tax advantage, calculated by the Revenue Commissioners which would be withdrawn from or denied to the person to whom the notice is given,

(iii) the tax consequences of the transaction determined by the Revenue Commissioners in so far as they would refer to the person, and

(iv) the amount of any relief from double taxation calculated by the Revenue Commissioners which they

would propose to give to the person in accordance with *subsection (5)(c)*.

(*b*) *Section 869* shall, with any necessary modifications, apply for the purposes of a notice given under this subsection or *subsection (10)* as if it were a notice given under the Income Tax Acts.

(7) Any person aggrieved by an opinion formed or, in so far as it refers to the person, a calculation or determination made by the Revenue Commissioners pursuant to *subsection (4)* may, by notice in writing given to the Revenue Commissioners within 30 days of the date of the notice of opinion, appeal to the Appeal Commissioners on the grounds and, notwithstanding any other provision of the Acts, only on the grounds that, having regard to all of the circumstances, including any fact or matter which was not known to the Revenue Commissioners when they formed their opinion or made their calculation or determination, and to this section—

(*a*) the transaction specified or described in the notice of opinion is not a tax avoidance transaction,

(*b*) the amount of the tax advantage or the part of the tax advantage, specified or described in the notice of opinion which would be withdrawn from or denied to the person is incorrect,

(*c*) the tax consequences specified or described in the notice of opinion, or such part of those consequences as shall be specified or described by the appellant in the notice of appeal, would not be just and reasonable in order to withdraw or to deny the tax advantage or part of the tax advantage specified or described in the notice of opinion, or

(*d*) the amount of relief from double taxation which the Revenue Commissioners propose to give to the person is insufficient or incorrect.

(8) The Appeal Commissioners shall hear and determine an appeal made to them under *subsection (7)* as if it were an appeal against an assessment to income tax and, subject to *subsection (9)*, the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications; but on the hearing or rehearing of the appeal—

(*a*) it shall not be lawful to enquire into any grounds of appeal other than those specified in *subsection (7)*, and

(*b*) at the request of the appellants, 2 or more appeals made by 2 or more persons pursuant to the same opinion, calculation or determination formed or made by the Revenue Commissioners pursuant to *subsection (4)* may be heard or reheard together.

(9) (*a*) On the hearing of an appeal made under *subsection (7)*, the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or are required to have regard under this section, and—

(i) in relation to an appeal made on the grounds referred to in *subsection (7)(a)*, the Appeal Commissioners

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shall determine the appeal, in so far as it is made on those grounds, by ordering, if they or a majority of them—

(I) consider that the transaction specified or described in the notice of opinion or any part of that transaction is a tax avoidance transaction, that the opinion or the opinion in so far as it relates to that part is to stand,

(II) consider that, subject to such amendment or addition thereto as the Appeal Commissioners or the majority of them deem necessary and as they shall specify or describe, the transaction, or any part of it, specified or described in the notice of opinion, is a tax avoidance transaction, that the transaction or that part of it be so amended or added to and that, subject to the amendment or addition, the opinion or the opinion in so far as it relates to that part is to stand, or

(III) do not so consider as referred to in *clause (I)* or *(II)*, that the opinion is void,

(ii) in relation to an appeal made on the grounds referred to in *subsection (7)(b)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the tax advantage or the part of the tax advantage specified or described in the notice of opinion be increased or reduced by such amount as they shall direct or that it shall stand,

(iii) in relation to an appeal made on the grounds referred to in *subsection (7)(c)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the tax consequences specified or described in the notice of opinion shall be altered or added to in such manner as they shall direct or that they shall stand, or

(iv) in relation to an appeal made on the grounds referred to in *subsection (7)(d)*, they shall determine the appeal, in so far as it is made on those grounds, by ordering that the amount of the relief from double taxation specified or described in the notice of opinion shall be increased or reduced by such amount as they shall direct or that it shall stand.

(*b*) This subsection shall, subject to any necessary modifications, apply to the rehearing of an appeal by a judge of the Circuit Court and, to the extent necessary, to the determination by the High Court of any question or questions of law arising on the statement of a case for the opinion of the High Court.

(10) The Revenue Commissioners may at any time amend, add to or withdraw any matter specified or described in a notice of opinion by giving notice (in this subsection referred to as ''the notice of amendment'') in writing of the amendment, addition or withdrawal to each and every person affected thereby, in so far as the person is so affected, and *subsections (1)* to *(9)* shall apply in all respects as if the notice of amendment were a notice of opinion and any matter

specified or described in the notice of amendment were specified or described in a notice of opinion; but no such amendment, addition or withdrawal may be made so as to set aside or alter any matter which has become final and conclusive on the determination of an appeal made with regard to that matter under *subsection (7)*. Pt.33 S.811

(11) Where pursuant to *subsections (2)* and *(4)* the Revenue Commissioners form the opinion that a transaction is a tax avoidance transaction and pursuant to that opinion notices are to be given under *subsection (6)* to 2 or more persons, any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply with respect to the giving of those notices or to the performance of any acts or the discharge of any functions authorised by this section to be performed or discharged by them or to the performance of any act or the discharge of any functions, including any act or function in relation to an appeal made under *subsection (7)*, which is directly or indirectly related to the acts or functions so authorised.

(12) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions, including the forming of an opinion, authorised by this section to be performed or discharged by the Revenue Commissioners, and references in this section to the Revenue Commissioners shall with any necessary modifications be construed as including references to an officer so nominated.

(13) This section shall apply as respects any transaction where the whole or any part of the transaction is undertaken or arranged on or after the 25th day of January, 1989, and as respects any transaction undertaken or arranged wholly before that date in so far as it gives rise to, or would but for this section give rise to—

(*a*) a reduction, avoidance or deferral of any charge or assessment to tax, or part thereof, where the charge or assessment arises by virtue of any other transaction carried out wholly on or after a date, or

(*b*) a refund or a payment of an amount, or of an increase in an amount, of tax, or part thereof, refundable or otherwise payable to a person where that amount or increase in the amount would otherwise become first so refundable or otherwise payable to the person on a date,

which could not fall earlier than the 25th day of January, 1989.

Taxation of income deemed to arise from transfers of right to receive interest from securities.

[ITA67 s449; CTA76 s140(1) and Sch2 PtI par22]

812.—(1) In this section—

''interest'' includes dividends, annuities and shares of annuities;

''securities'' include stocks and shares of all descriptions.

(2) Where in any year of assessment or accounting period an owner (in this section referred to as ''the owner'') of any securities sells or transfers the right to receive any particular interest payable (whether before or after such sale or transfer) in respect of those securities without selling or transferring those securities, then, and in every such case, the following provisions shall apply:

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(*a*) for the purposes of the Tax Acts that interest (whether it would or would not be chargeable to tax if this section had not been enacted)—

(i) shall be deemed to be the income of the owner or, where the owner is not the beneficial owner of the securities and some other person (in this section referred to as ''the beneficiary'') is beneficially entitled to the income arising from the securities, the income of the beneficiary,

(ii) shall be deemed to be income of the owner or the beneficiary, as the case may be, for that year of assessment or accounting period, as the case may be,

(iii) shall not be deemed to be income of any other person, and

(iv) shall, where the proceeds of the sale or transfer are chargeable to tax under Schedule C or under *Chapter 2* of *Part 4*, be deemed to be equal in amount to the amount of those proceeds;

(*b*) where the right to receive that particular interest is subsequently sold, transferred or otherwise realised, the proceeds of such subsequent sale, transfer or other realisation shall not be deemed for any of the purposes of the Tax Acts to be income of the person by or on whose behalf such subsequent sale, transfer or other realisation is made or effected;

(*c*) where the securities are of such character that the interest payable in respect of the securities may be paid without deduction of tax, then, unless the owner or beneficiary, as the case may be, shows that the proceeds of any sale or other realisation of the right to receive the interest, which is deemed to be income of the owner or of the beneficiary, as the case may be, by virtue of this section, have been charged to tax under Schedule C or under *Chapter 2* of *Part 4*, the owner or beneficiary, as the case may be, shall be chargeable to tax under Case IV of Schedule D in respect of that interest, but shall be entitled to credit for any tax which that interest is shown to have borne;

(*d*) where in any case to which *paragraph (c)* applies the computation of the tax in respect of the interest which is made chargeable under Case IV of Schedule D by that paragraph would, if that interest had been chargeable under Case III of Schedule D, have been made by reference to the amount received in the State, the tax chargeable pursuant to *paragraph (c)* shall be computed on the full amount of the sums received in the State in the year of assessment or in any subsequent year of assessment in which the owner remains the owner of the securities;

(*e*) nothing in this subsection shall affect any provision of the Tax Acts authorising or requiring the deduction of tax from any interest which is deemed by virtue of this subsection to be income of the owner or of the beneficiary or from the proceeds of any subsequent sale, transfer or other realisation mentioned in this subsection of the right to receive that particular interest.

(3) In relation to corporation tax— PT.33 S.812

(*a*) *subsection (2)(c)* shall apply (subject to the provisions of the Corporation Tax Acts relating to distributions) to any interest, whether or not the securities are of such character that the interest may be paid without deduction of tax, and as if '', but shall be entitled to credit for any tax which that interest is shown to have borne'' were deleted, and

(*b*) *subsection (2)(d)* shall not apply.

(4) The Revenue Commissioners may by notice in writing require any person to furnish them, within such time (not being less than 28 days from the service of the notice) as shall be specified in the notice, with such particulars in relation to all securities of which such person was the owner at any time during the period specified in the notice as the Revenue Commissioners may consider to be necessary for the purposes of this section or for the purpose of discovering whether—

(*a*) tax has been borne in respect of the interest payable in respect of those securities, or

(*b*) the proceeds of any sale, transfer or other realisation of the right to receive the interest in respect of those securities has been charged to tax under Schedule C or under *Chapter 2* of *Part 4*.

Taxation of transactions associated with loans or credit.

[FA74 s41(1) to (6); CTA76 s140(1) and Sch2 PtI par45 and s164 and Sch3 PtII]

813.—(1) This section shall apply as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is loaned or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

(2) *Subsection (1)* shall apply whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

(3) Where the transaction provides for the payment of any annuity or other annual payment, not being interest but being a payment chargeable to tax under Schedule D, the payment shall be treated for the purposes of the Tax Acts as if it were a payment of annual interest.

(4) Where the transaction is one by which an owner of any securities or other property carrying a right to income (in this subsection referred to as ''the owner'') agrees to sell or transfer the property, and by the same or any collateral agreement—

(*a*) the purchaser or transferee (in this subsection referred to as ''the buyer'') or a person connected with the buyer agrees to sell or transfer at a later date the same or any other property to the owner or a person connected with the owner, or

(*b*) the owner or a person connected with the owner acquires an option, which the owner or the person connected with the owner subsequently exercises, to buy or acquire the

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same or any other property from the buyer or a person connected with the buyer,

then, without prejudice to the liability of any other person, the owner shall be chargeable to tax under Case IV of Schedule D on an amount equal to any income which arises from the first-mentioned property at any time before the repayment of the loan or the termination of the credit.

(5) Where under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property), then, without prejudice to the liability of any other person, the first-mentioned person shall be chargeable to tax under Case IV of Schedule D on a sum equal to the amount of income assigned, surrendered, waived or foregone.

(6) Where credit is given for the purchase price of any property and the rights attaching to the property are such that during the subsistence of the debt the purchaser's rights to income from the property are suspended or restricted, the purchaser shall be treated for the purposes of *subsection (5)* as having surrendered a right to income of an amount equivalent to the income which the purchaser has in effect foregone by obtaining the credit.

(7) The amount of any income payable subject to deduction of tax at the standard rate shall be taken for the purposes of *subsection (5)* as the amount before deduction of that tax.

Taxation of income deemed to arise from transactions in certificates of deposit and assignable deposits.

[FA74 s55; CTA76 s140(1) and Sch2 PtI par47; FA77 s42 and Sch1 PtIV par5]

814.—(1) In this section—

''assignable deposit'' means a deposit of money in any currency, which has been deposited with any person, whether it is to be repaid with or without interest and which at the direction of the depositor may be assigned with or without interest to another person;

''certificate of deposit'' means a document relating to money in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable.

(2) This section shall apply to any right—

(*a*) to receive from any person an amount of money, with or without interest, which is stated in a certificate of deposit issued to the person who has deposited the money or to any other person, or

(*b*) to receive from any person an amount of money, with or without interest, being a right arising from an assignable deposit which may be assigned or transferred to another person by the person who has deposited the money or by any person who has acquired the right to do so.

(3) Where after the 3rd day of April, 1974, a person acquires a right to which this section applies, any gain arising to the person from the disposal of that right or, except in so far as it is a right to receive interest, from its exercise shall, if not to be taken into account as a trading receipt, be deemed for the purposes of the Tax Acts to

be annual profits or gains chargeable to tax under Case IV of Schedule D and shall be charged to tax accordingly. Pt.33 S.814

(4) Where on or before the 3rd day of April, 1974, a person acquired a right to which this section applies and disposes or disposed of, or exercises or exercised, the right after that date, so much of any gain arising to the person from that disposal, or, except in so far as it is a right to receive interest, from that exercise, as bears to the total amount of the gain the same proportion as the number of days from the 3rd day of April, 1974, to the date of the disposal or exercise bears to the total number of days from the date of the acquisition to the date of the disposal or exercise, shall, if not to be taken into account as a trading receipt, be deemed for the purposes of the Tax Acts to be annual profits or gains chargeable to tax under Case IV of Schedule D and shall be charged to tax accordingly.

(5) Where a person sustains a loss in a transaction which if profits had arisen from it would be chargeable to tax by virtue of *subsection (3)* or *(4)*, then, if the person is chargeable to tax under Schedule C or D in respect of the interest payable on the amount of money the right to which has been disposed of, the amount of that interest shall be included in the amounts against which the person may claim to set off the amount of the loss under *section 383* or *399*, as the case may be.

(6) For the purposes of this section, profits or gains shall not be treated as falling to be taken into account as a trading receipt by reason only that they are included in the computation required by *section 707*.

Taxation of income deemed to arise on certain sales of securities.

[FA84 s29(1) to (3)(a) and (4) to (5); FA91 s27; FA93 s21; FA94 s26]

815.—(1) In this section—

''owner'', in relation to securities, means at any time the person who would be entitled, if the securities were redeemed at that time by the person who issued them, to the proceeds of the redemption;

''securities'' includes—

(*a*) assets which are not chargeable assets for the purposes of capital gains tax by virtue of *section 607*, and

(*b*) stocks, bonds and obligations of any government, municipal corporation, company or other body corporate, whether creating or evidencing a charge on assets or not,

but does not include shares (within the meaning of the Companies Act, 1963) of a company (within the meaning of that Act) or similar body.

(2) (*a*) Subject to *paragraphs (b)* to *(d)* and *subsection (3)*, where the owner of a security (in this subsection referred to as ''the owner'') sells or transfers, or causes or authorises to be sold or transferred, the security and where any interest payable in respect of the security is receivable otherwise than by the owner, then, for the purposes of this section—

(i) interest payable in respect of the security shall be deemed for the purposes of the Tax Acts to have accrued on a day to day basis from the date on which the owner acquired the security, and

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(ii) the owner shall be chargeable under Case IV of Schedule D on interest so deemed to have accrued from that date up to the date of the contract for sale or transfer of the security or the date of payment of the consideration in respect of the sale or transfer, whichever is the later.

(*b*) Where during the owner's period of ownership of the security the owner has received interest in respect of the security in respect of which the owner is chargeable to tax under any other provision of the Tax Acts, the amount of interest on which the owner is chargeable under this section shall be reduced by the amount in respect of which the owner is so chargeable under that other provision.

(*c*) Where under the terms of the sale or transfer of the security or an associated agreement, arrangement, understanding, promise or undertaking, whether express or implied, the owner—

(i) agrees to buy back or reacquire the security, or

(ii) acquires an option which the owner subsequently exercises to buy back or reacquire the security,

the charge to tax imposed under this section shall be based on the interest deemed to have accrued up to the next date after that sale or transfer on which interest is payable in respect of the security.

(*d*) Where the owner subsequently resells or retransfers, or causes or authorises to be resold or retransferred, the security, any further charge to tax under this section in respect of that subsequent resale or retransfer shall be based on interest deemed to have accrued from a date not earlier than that next payment date.

(3) This section shall not apply—

(*a*) where the security has been held by the same owner for a continuous period of at least 2 years immediately before the date of such contract for sale or transfer or the date of such payment of consideration, whichever is the later, as is referred to in *subsection (2)(a)*, the personal representatives of a deceased person whose estate is in the course of administration and the deceased person being regarded for the purposes of this paragraph as being the same owner,

(*b*) where the owner is a person carrying on a trade which consists wholly or partly of dealing in securities, the profits of which are chargeable to income tax or corporation tax under Case I of Schedule D for the year of assessment or, as the case may be, the accounting period in respect of which the consideration for the sale is taken into account in computing for the purposes of assessment to income tax or corporation tax for that year or accounting period the profits of the trade,

(*c*) where—

(i) the owner is an undertaking for collective investment (within the meaning of *section 738*), and

(ii) any gain or loss accruing to the owner on the sale or transfer is a chargeable gain or an allowable loss, as the case may be,

(*d*) where the sale or transfer is a sale or transfer by a wife to her husband at a time when she is treated as living with him for income tax purposes as provided in *section 1015*, or a sale or transfer by a husband to a wife at such time, the husband and the wife being regarded for the purposes of *paragraph (a)*, in the case of such a transaction or in the case of a sale or transfer by the husband or the wife to any other person after such a transaction or transactions, as being the same owner, or

(*e*) where the security is a security the interest on which is treated as a distribution for the purposes of the Corporation Tax Acts.

(4) The reference in *subsection (2)(c)* to buying back or reacquiring the security shall be deemed to include references to buying or acquiring a similar security, and securities shall be so deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) (*a*) For the purposes of identifying securities acquired by an owner with securities included in a sale or transfer by the owner, in so far as the securities are of the same class, securities acquired at a later date shall be deemed to be so included before securities acquired at an earlier date.

(*b*) Securities shall be regarded as being of the same class where they entitle their owners to the same rights against the same person as to capital and interest and the same remedies for the enforcement of those rights.

(6) (*a*) Without prejudice to any other provision of the Tax Acts requiring the disclosure of information, an inspector may by notice in writing require any person to whom *paragraph (b)* applies to furnish within the time specified in the notice such particulars as the inspector considers necessary for the purposes of this section and for the purpose of determining whether a charge to tax arises under this section.

(*b*) This paragraph shall apply to—

(i) a person who issues a security,

(ii) any agent of such a person, and

(iii) an owner of a security.

Pt.33
Taxation of shares issued in place of cash dividends.

[FA74 s56(1), (2), (3)(b) and (c) and (4); FA93 s36]

816.—(1) In this section—

''company'' means any body corporate;

''quoted company'' means a company whose shares or any class of whose shares—

(*a*) are listed in the official list of the Irish Stock Exchange or any other stock exchange, or

(*b*) are dealt in on the smaller companies market, the unlisted securities market or the exploration securities market of the Irish Stock Exchange or on any similar or corresponding market of any other stock exchange;

''share'' means share in the share capital of a company and, other than in the definition of ''quoted company'', includes stock and any other interest in the company.

(2) Where any person as a consequence of the exercise (whether before, on or after the declaration of a distribution of profits by a company which is not a quoted company) of an option to receive in respect of shares in the company either a sum in cash or additional share capital of the company receives such additional share capital, that person shall be deemed for the purposes of the Tax Acts to have received from the company, instead of such share capital, income equal to the sum that person would have received if that person had received the distribution in cash.

(3) Any income deemed under *subsection (2)* to have been received from a company by a person shall—

(*a*) if the company is resident outside the State, be treated as income from securities and possessions outside the State and be assessed and charged to tax under Case III of Schedule D;

(*b*) if the company is resident in the State, be treated as profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule and be assessed and charged to tax under Case IV of Schedule D.

(4) For the purposes of this section, an option to receive either a dividend in cash or additional share capital shall be conferred on a person not only where that person is required to choose one or the other, but also where that person is offered the one subject to a right, however expressed, to choose the other instead, and a person's abandonment of, or failure to exercise, such a right shall be treated for those purposes as an exercise of the option.

Schemes to avoid liability to tax under Schedule F.

[FA89 s88(1) to (7)]

817.—(1) (*a*) In this section—

''appeal'' means an appeal made in accordance with *section 933*;

''close company'' has the same meaning as it has, by virtue of *sections 430* and *431*, for the purposes of the Corporation Tax Acts;

''market value'' shall be construed in accordance with *section 548*;

''new consideration'' has the same meaning as in *section 135*;

''shares'' includes loan stock, debentures and any interest or rights in or over, or any option in relation to, shares, loan stock or debentures, and references to ''shareholder'' shall be construed accordingly.

(*b*) (i) For the purposes of this section, there shall be a disposal of shares by a shareholder where the shareholder disposes of shares or is treated under the Capital Gains Tax Acts as disposing of shares, and references to a disposal of shares shall include references to a part disposal of shares within the meaning of those Acts.

(ii) Where under any arrangement between a close company (in this subparagraph referred to as ''the first-mentioned company'') and its, or some of its, shareholders (being any arrangement similar to an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation) another close company issues shares to those shareholders in respect of or in proportion to (or as nearly as may be in proportion to) their holdings of shares in the first-mentioned company, but the shares in the first-mentioned company are either retained by the shareholders or are cancelled, then, those shareholders shall for the purposes of this section be treated as making a disposal or a part disposal, as the case may be, of the shares in the first-mentioned company in exchange for those shares held by them in consequence of such arrangement.

(*c*) For the purposes of this section, the interest of a shareholder in a trade or business shall not be significantly reduced following a disposal of shares, or the carrying out of a scheme or arrangement of which the disposal of shares is a part, only if at any time after the disposal the percentage of—

(i) the ordinary share capital of the close company carrying on the trade or business at such time which is beneficially owned by the shareholder at such time,

(ii) any profits, which are available for distribution to equity holders, of the close company carrying on the trade or business at such time to which the shareholder is beneficially entitled at such time, or

(iii) any assets, available for distribution to equity holders on a winding up, of the close company carrying on the trade or business at such time to which the shareholder would be beneficially entitled at such time on a winding up of the close company,

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is not significantly less than the percentage of that ordinary share capital or those profits or assets, as the case may be, of the close company carrying on the trade or business at any time before the disposal—

(I) which the shareholder beneficially owned, or

(II) to which the shareholder was beneficially entitled,

at such time before the disposal, and *sections 413* to *415* and *section 418* shall apply, but without regard to *section 411(1)(c)* in so far as it relates to those sections, with any necessary modifications, to the determination for the purposes of this paragraph of the percentage of share capital or other amount which a shareholder beneficially owns or is beneficially entitled to, as they apply to the determination for the purposes of *Chapter 5* of *Part 12* of the percentage of any such amount which a company so owns or is so entitled to.

(*d*) The value of any amount received in money's worth shall for the purposes of this section be the market value of the money's worth at the time of its receipt.

(2) This section shall apply for the purposes of counteracting any scheme or arrangement undertaken or arranged by a close company, or to which the close company is a party, being a scheme or arrangement the purpose of which, or one of the purposes of which, is to secure that any shareholder in the close company avoids or reduces a charge or assessment to income tax under Schedule F by converting into a capital receipt of the shareholder any amount which would otherwise be available for distribution by the close company to the shareholder by means of a dividend.

(3) Subject to *subsection (7)*, this section shall apply to a disposal of shares in a close company by a shareholder if, following the disposal or the carrying out of a scheme or arrangement of which the disposal is a part, the interest of the shareholder in any trade or business (in this section referred to as ''the specified business'') which was carried on by the close company at the time of the disposal, whether or not the specified business continues to be carried on by the close company after the disposal, is not significantly reduced.

(4) Subject to *subsection (5)* and notwithstanding *section 130(1)* or any provision of the Capital Gains Tax Acts, the amount of—

(*a*) the proceeds in either or both money and money's worth received by a shareholder in respect of a disposal of shares in a close company to which this section applies, or

(*b*) if it is less than those proceeds, the excess of those proceeds over any consideration, being consideration which—

(i) is new consideration received by the close company for the issue of those shares, and

(ii) has not previously been taken into account for the purposes of this subsection,

shall be treated for the purposes of the Tax Acts as a distribution (within the meaning of the Corporation Tax Acts) made at the time of the disposal by the close company to the shareholder. Pt.33 S.817

(5) (*a*) In this subsection, ''capital receipt'' means, as appropriate in the circumstances, any amount of either or both money and money's worth (other than shares issued by a close company carrying on the specified business) which—

(i) is received by a shareholder in respect of a disposal of shares or by reason of any act done pursuant to a scheme or arrangement of which the disposal is a part, and

(ii) apart from this section is not chargeable to income tax in the hands of the shareholder.

(*b*) The amount which at any time may be treated under *subsection (4)* as a distribution made by a close company to a shareholder in respect of any disposal of shares in the close company shall not exceed the amount of the capital receipt, or the aggregate of the amounts of the capital receipts, which at such time has or have been received by the shareholder—

(i) in respect of the disposal, or

(ii) by reason of any act done pursuant to a scheme or arrangement of which the disposal is a part.

(*c*) A capital receipt received by a shareholder at any time on or after the disposal shall in respect of such time result in so much of the amount mentioned in *subsection (4)* being treated as a distribution (which is made by the close company to the shareholder at the time of the disposal) as does not exceed the amount of the capital receipt, or the aggregate of the amounts of such capital receipts, which at such time on or after the disposal has or have been received by the shareholder.

(*d*) Where as a result of a shareholder having received a capital receipt a close company is treated as having made a distribution to the shareholder under *subsection (4)*, any provision of the Income Tax Acts in respect of interest on unpaid tax shall apply for the purposes of tax due in respect of that distribution as if the tax were due and payable only from the day on which the shareholder received the capital receipt.

(6) Notwithstanding *section 136(1)*, where a shareholder in a close company is treated under this section as having received a distribution from the close company, the shareholder shall only be entitled to a tax credit in respect of the distribution to the extent that the close company has paid advance corporation tax in respect of the distribution in accordance with *Chapter 8* of *Part 6*; but, where a close company would but for the application of *section 162* have paid an amount or an additional amount of advance corporation tax in respect of a distribution, the close company shall be treated as having paid such an amount or additional amount of advance corporation tax in respect of the distribution for the purposes of this subsection.

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(7) This section shall not apply as respects a disposal of shares in a close company by a shareholder where it is shown to the satisfaction of the inspector or, on the hearing or the rehearing of an appeal, to the satisfaction of the Appeal Commissioners or a judge of the Circuit Court, as the case may be, that the disposal was made for bona fide commercial reasons and not as part of a scheme or arrangement the purpose or one of the purposes of which was the avoidance of tax.

PART 34

Provisions Relating to the Residence of Individuals

Interpretation (*Part 34*).

[FA94 s149]

818.—In this Part other than in *section 825*—

''the Acts'' means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts, and

(*c*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

and any instruments made thereunder;

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing for the purposes of this Part;

''present in the State'', in relation to an individual, means the personal presence of the individual in the State;

''tax'' means any tax payable in accordance with any provision of the Acts.

Residence.

[FA94 s150]

819.—(1) For the purposes of the Acts, an individual shall be resident in the State for a year of assessment if the individual is present in the State—

(*a*) at any one time or several times in the year of assessment for a period in the whole amounting to 183 days or more, or

(*b*) at any one time or several times—

(i) in the year of assessment, and

(ii) in the preceding year of assessment,

for a period (being a period comprising in the aggregate the number of days on which the individual is present in the State in the year of assessment and the number of days on which the individual was present in the State in the preceding year of assessment) in the aggregate amounting to 280 days or more.

(2) Notwithstanding *subsection (1)(b)*, where for a year of assessment an individual is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days—

(*a*) the individual shall not be resident in the State for the year of assessment, and

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(*b*) no account shall be taken of the period for the purposes of the aggregate mentioned in *subsection (1)(b)*.

(3) (*a*) Notwithstanding *subsections (1)* and *(2)*, an individual—

(i) who is not resident in the State for a year of assessment, and

(ii) to whom *paragraph (b)* applies,

may at any time elect to be treated as resident in the State for that year and, where an individual so elects, the individual shall for the purposes of the Acts be deemed to be resident in the State for that year.

(*b*) This paragraph shall apply to an individual who satisfies an authorised officer that the individual is in the State—

(i) with the intention, and

(ii) in such circumstances,

that the individual will be resident in the State for the following year of assessment.

(4) For the purposes of this section, an individual shall be deemed to be present in the State for a day if the individual is present in the State at the end of the day.

Ordinary residence.

[FA94 s151]

820.—(1) For the purposes of the Acts, an individual shall be ordinarily resident in the State for a year of assessment if the individual has been resident in the State for each of the 3 years of assessment preceding that year.

(2) An individual ordinarily resident in the State shall not for the purposes of the Acts cease to be ordinarily resident in the State for a year of assessment unless the individual has not been resident in the State in each of the 3 years of assessment preceding that year.

Application of *sections 17* and *18(1)* and *Chapter 1* of *Part 3*.

[FA94 s152; FA95 s169(1)]

821.—(1) Where an individual is not resident but is ordinarily resident in the State, *sections 17* and *18(1)* and *Chapter 1* of *Part 3* shall apply as if the individual were resident in the State; but this section shall not apply in respect of—

(*a*) the income of an individual derived from one or more of the following—

(i) a trade or profession, no part of which is carried on in the State, and

(ii) an office or employment, all the duties of which are performed outside the State, and

(*b*) other income of an individual which in any year of assessment does not exceed £3,000.

(2) In determining for the purposes of *subsection (1)* whether the duties of an office or employment are performed outside the State,

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any duties performed in the State, the performance of which is merely incidental to the performance of the duties of the office or employment outside the State, shall be treated as having been performed outside the State.

Split year residence.

[FA94 s153]

822.—(1) For the purposes of a charge to tax on any income, profits or gains from an employment, where during a year of assessment (in this section referred to as ''the relevant year'')—

(*a*) (i) an individual who has not been resident in the State for the preceding year of assessment satisfies an authorised officer that the individual is in the State—

(I) with the intention, and

(II) in such circumstances,

that the individual will be resident in the State for the following year of assessment, or

(ii) an individual who is resident in the State satisfies an authorised officer that the individual is leaving the State, other than for a temporary purpose—

(I) with the intention, and

(II) in such circumstances,

that the individual will not be resident in the State for the following year of assessment,

and

(*b*) the individual would but for this section be resident in the State for the relevant year,

subsection (2) shall apply in relation to the individual.

(2) (*a*) An individual to whom *paragraphs (a)(i)* and *(b)* of *subsection (1)* apply shall be deemed to be resident in the State for the relevant year only from the date of his or her arrival in the State.

(*b*) An individual to whom *paragraphs (a)(ii)* and *(b)* of *subsection (1)* apply shall be deemed to be resident in the State for the relevant year only up to and including the date of his or her leaving the State.

(3) Where by virtue of this section an individual is resident in the State for part of a year of assessment, the Acts shall apply as if—

(*a*) income arising during that part of the year or, in a case to which *section 71(3)* applies, amounts received in the State during that part of the year were income arising or amounts received for a year of assessment in which the individual is resident in the State, and

(*b*) income arising or, as the case may be, amounts received in the remaining part of the year were income arising or amounts received in a year of assessment in which the individual is not resident in the State.

Pt.34
Deduction for income earned outside the State.

[FA94 s154; FA95 s170(1)]

823.—(1) In this section—

''qualifying day'', in relation to an office or employment of an individual, means a day which is—

(*a*) one of at least 14 consecutive days on which the individual is absent from the State for the purposes of the performance of the duties of the office or employment or of those duties and the duties of other offices or employments of the individual outside the State and which (taken as a whole) are substantially devoted to the performance of such duties, and

(*b*) one on which the individual concerned is absent from the State at the end of the day,

but no day shall be counted more than once as a qualifying day;

''relevant period'', in relation to a year of assessment, means a continuous period of 12 months—

(*a*) part only of which is comprised in the year of assessment, and

(*b*) no part of which is comprised in another relevant period;

''the specified amount'' means an amount determined by the formula—

$$\frac{D \times E}{365}$$

where—

D is the number of qualifying days in the year of assessment concerned, and

E is all the income, profits or gains from an office, employment or pension whether chargeable under Schedule D or E (including income from offices or employments the duties of which are performed in the State) of an individual in that year.

(2) (*a*) Subject to *paragraph (b)*, this section shall apply to—

(i) an office of director of a company which is within the charge to corporation tax, or would be within the charge to corporation tax if it were resident in the State, and which carries on a trade or profession,

(ii) an employment other than—

(I) an employment the emoluments of which are paid out of the revenue of the State, or

(II) an employment with any board, authority or other similar body established by or under statute.

(*b*) This section shall not apply in any case where the income from an office or employment—

(i) is chargeable to tax in accordance with *section 71(3)*,

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(ii) is subject to *section 73*, or would be so subject if the employment were deemed to be property situated where the employment is exercised, or

(iii) is income to which *section 822* applies.

(3) Where for any year of assessment an individual resident in the State makes a claim in that behalf to and satisfies an authorised officer that—

(*a*) the duties of an office or employment to which this section applies of the individual are performed wholly or partly outside the State, and

(*b*) either—

(i) the number of days in that year which are qualifying days in relation to the office or employment (together with any days which are qualifying days in relation to any other such office or employment of the individual), or

(ii) the number of such days referred to in *subparagraph (i)* in a relevant period in relation to that year,

amounts to at least 90 days,

there shall be deducted from the income, profits or gains from the office or employment to be assessed under Schedule D or E, as may be appropriate, an amount equal to the specified amount.

(4) Notwithstanding anything in the Acts, the income, profits or gains from an office or employment shall for the purposes of this section be deemed not to include any amounts paid in respect of expenses incurred wholly, exclusively and necessarily in the performance of the duties of the office or employment.

Appeals.

[FA94 s156]

824.—(1) An individual aggrieved by a decision of an authorised officer on any question arising under the provisions of this Chapter which require an individual to satisfy an authorised officer on such a question may, by notice in writing to that effect given to the authorised officer within 2 months from the date on which notice of the decision is given to the individual, make an application to have the question heard and determined by the Appeal Commissioners.

(2) Where an application is made under *subsection (1)*, the Appeal Commissioners shall hear and determine the question concerned in the like manner as an appeal made to them against an assessment, and the provisions of the Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications.

Residence treatment of donors of gifts to the State.

[FA77 s53]

825.—(1) In this section—

''the Acts'' means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts, and

(*c*) the Capital Acquisitions Tax Act, 1976; PT.34 S.825

''donor'' means an individual who makes a gift to the State;

''gift'' means a gift of property to the State which, on acceptance of the gift by the Government pursuant to the State Property Act, 1954, becomes vested pursuant to that Act in a State authority within the meaning of that Act;

''Irish tax'' means any tax imposed by the Acts;

''property'' includes interests and rights of any description;

''relevant date'', in relation to an individual (being a donor or the spouse of a donor), means the date (not being earlier than the 1st day of September, 1974) on which the individual leaves the State for the purpose of residence (other than occasional residence) outside the State;

''tax in that country'' means any tax imposed in that country which is identical with or substantially similar to Irish tax;

''visits'' means—

(*a*) in relation to a donor, visits by the donor to the State after the relevant date for the purpose of advising on the management of the property which is the subject of the gift, being visits that are in the aggregate less than 182 days in any year of assessment in which they are made, and

(*b*) in relation to the spouse of a donor, visits by that spouse when accompanying the donor on visits of the kind referred to in *paragraph (a)*.

(2) Where for any year of assessment a person (being a donor or the spouse of a donor) is resident in a country outside the State for the purposes of tax in that country and is chargeable to that tax without any limitation as to chargeability, then, notwithstanding anything to the contrary in the Tax Acts—

(*a*) as respects the year of assessment in which the relevant date occurs, that person shall not as from the relevant date be regarded as ordinarily resident in the State for the purposes of Irish tax, and

(*b*) as respects any subsequent year of assessment, in determining whether that person is resident or ordinarily resident in the State for the purposes of Irish tax, visits shall be disregarded.

PART 35

Double Taxation Relief

CHAPTER 1

Principal reliefs

Agreements for relief from double taxation.

[ITA67 s361; FA74 s86 and Sch2 PtI; CTA76 s22(2), s23(1) and s166(1) and Sch4 PtI; FA83 s47(4)]

826.—(1) Where the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of—

(*a*) income tax;

(*b*) corporation tax in respect of income and chargeable gains;

(*c*) any taxes of a similar character imposed by the laws of the State or by the laws of that territory;

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and that it is expedient that those arrangements should have the force of law, then, subject to this section and *sections 168* and *833* to *835*, the arrangements shall, notwithstanding any enactment other than *section 168*, have the force of law.

(2) *Schedule 24* shall apply where arrangements which have the force of law by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the State.

(3) Any arrangements to which the force of law is given under this section may include provision for relief from tax for periods before the passing of this Act or before the making of the arrangements and provisions as to income or chargeable gains which is or are not subject to double taxation, and *subsections (1)* and *(2)* shall apply accordingly.

(4) For the purposes of *subsection (1)*, arrangements made with the head of a foreign state shall be regarded as made with the government of that state.

(5) Any order made under this section may be revoked by a subsequent order, and any such revoking order may contain such transitional provisions as appear to the Government to be necessary or expedient.

(6) Where an order is proposed to be made under this section, a draft of the order shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann.

(7) Where any arrangements have the force of law by virtue of this section, the obligation as to secrecy imposed by any enactment shall not prevent the Revenue Commissioners or any authorised officer of the Revenue Commissioners from disclosing to any authorised officer of the government with which the arrangements are made such information as is required to be disclosed under the arrangements.

(8) The necessary apportionments as respects corporation tax shall be made where arrangements having the force of law by virtue of this section apply to the unexpired portion of an accounting period current at a date specified by the arrangements, and any such apportionment shall be made in proportion to the number of months or fractions of months in the part of the relevant accounting period before that date and in the remaining part of the relevant accounting period respectively.

(9) The Revenue Commissioners may from time to time make regulations generally for carrying out the provisions of this section or any arrangements having the force of law under this section and may in particular, but without prejudice to the generality of the foregoing, by those regulations provide—

(*a*) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure to the benefit of persons not entitled to such relief, and

(*b*) for authorising, in cases where tax deductible from any periodical payment has, in order to comply with any such arrangements, not been deducted and it is discovered that the arrangements do not apply to that payment, the

recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Application to corporation tax of arrangements made in relation to corporation profits tax under old law.

[CTA76 s22(1) and s23(1)]

827.—Subject to any express amendments made by the Corporation Tax Acts and except in so far as arrangements made on or after the 31st day of March, 1976, provide otherwise, any arrangements made under section 361 of the Income Tax Act, 1967, or any earlier enactment corresponding to that section, in relation to corporation profits tax shall apply in relation to corporation tax and income and chargeable gains chargeable to corporation tax as they are expressed to apply in relation to corporation profits tax and profits chargeable to corporation profits tax, and not as they apply in relation to income tax; but this section shall not affect the operation, as they apply to corporation tax, of *section 826(7)* and *paragraph 12* of *Schedule 24*.

Capital gains tax: double taxation relief.

[CGTA75 s38, s51(1) and Sch1 PtI par3(6); FA97 s146(1) and Sch9 PtI par 9(3)]

828.—(1) For the purposes of giving relief from double taxation in relation to capital gains tax charged under the law of any country outside the State, in *section 826* and *Schedule 24* as they apply for the purposes of income tax, for references to income there shall be substituted references to chargeable gains, for references to the Income Tax Acts there shall be substituted references to the Capital Gains Tax Acts and for references to income tax there shall be substituted references to capital gains tax meaning, as the context may require, tax charged under the law of the State or tax charged under the law of a country outside the State.

(2) In so far as capital gains tax charged under the law of a country outside the State may by virtue of this section be taken into account under *section 826* and *Schedule 24* as applied by this section, that tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those provisions as they apply apart from this section.

(3) *Section 826(7)* shall apply in relation to capital gains tax as it applies in relation to income tax.

(4) Subject to *subsections (1)* to *(3)* and the other provisions of the Capital Gains Tax Acts relating to double taxation, the tax chargeable under the law of any country outside the State on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation under *Chapter 2* of *Part 19* of the gain accruing on the disposal.

Treatment for double taxation relief purposes of foreign tax incentive reliefs.

[FA70 s57(2) to (4); CTA76 s166(1) and Sch4 PtI]

829.—(1) This section shall apply to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the State.

(2) For the purposes of *section 826* and *Schedule 24*, any amount of tax under the law of a territory outside the State which would have been payable but for a relief to which this section applies given under that law (being a relief with respect to which provision is made in arrangements for double taxation relief which are the subject of an order under *section 826(1)*) shall be treated as having been payable, and references in *section 826* and in *Schedule 24* to double taxation, tax payable or chargeable or tax not chargeable directly or by deduction shall be construed accordingly.

(3) The Revenue Commissioners may make regulations generally for carrying out the provisions of this section or any arrangements

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having the force of law under *section 826* and may in particular, but without prejudice to the generality of the foregoing, provide in the regulations—

(*a*) for the purposes of this section or of the regulations, for the application (with or without modifications) of any provision of the Tax Acts or any regulations made under those Acts, including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law, and

(*b*) that the whole or any part of a dividend paid out of profits or gains which consist of or include profits or gains in relation to which double taxation relief is given by virtue of this section is not to be regarded as income or profits for any purpose of the Tax Acts.

CHAPTER 2

Miscellaneous

Relief to certain companies liable to foreign tax.

[CTA76 s163]

830.—(1) In this section—

''accounting period'' includes a part of an accounting period;

''external tax'' means a tax chargeable and payable under the law of the territory in which the paying company is resident, being a territory to which this section applies, and which corresponds to Irish corporation tax or income tax or both of those taxes, but a tax payable under the law of a province, state or other part of a country, or which is levied by or on behalf of a municipality or other local body, shall for the purposes of this subsection be deemed not to correspond to those taxes.

(2) This section shall apply to every territory other than—

(*a*) Northern Ireland and Great Britain,

(*b*) the United States of America, and

(*c*) a territory with the Government of which arrangements are for the time being in force by virtue of *section 826*.

(3) Where a company (in this section referred to as ''the investing company'') has paid by deduction or otherwise, or is liable to pay, by reference to any part of its income arising in a territory to which this section applies, tax for any accounting period and it is shown to the satisfaction of the Revenue Commissioners that—

(*a*) that part of the investing company's income consists of a dividend or interest paid to it by a company resident in the territory (in this section referred to as ''the paying company'') not less than 50 per cent of the voting power in which is controlled directly or indirectly by the investing company,

(*b*) that dividend or interest arose from the investment in the paying company by the investing company, whether by means of loan or otherwise, of a sum or sums representing—

(i) profits the Irish tax referable to which was reduced to nil under—

(I) Part III of the Finance (Miscellaneous Provisions) Act, 1956,

(II) Chapter IV of Part XXV of the Income Tax Act, 1967, or

(III) Part IV of the Corporation Tax Act, 1976,

(ii) such proportion of profits the Irish tax referable to which was reduced otherwise than to nil under those provisions as is equal to the proportion by which that Irish tax has been so reduced, or

(iii) profits arising from exempted trading operations which by virtue of—

(I) Parts I and II of the Finance (Miscellaneous Provisions) Act, 1958,

(II) Chapter I of Part XXV of the Income Tax Act, 1967, or

(III) Part V of the Corporation Tax Act, 1976,

were not, in relation to the company by which such operations were carried on, taken into account for any purpose of—

(A) the Income Tax Acts,

(B) Part V of the Finance Act, 1920, and the enactments amending or extending that Part, or

(C) the Corporation Tax Acts,

and

(*c*) the investing company has paid external tax in the territory in respect of that part of its income,

then, the Revenue Commissioners may grant to the investing company in respect of that accounting period such relief as is just with a view to affording relief in respect of the double taxation of that part of the investing company's income, but not exceeding the lesser of—

(*aa*) 50 per cent of the total of the corporation tax which but for this section would be payable by the investing company in respect of that part of its income, and

(*bb*) the amount of the external tax paid or payable in the territory in respect of that part of its income after deduction of any relief to which the company may be entitled in that territory.

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(4) (*a*) External tax paid by the paying company in respect of its profits shall be taken into account in considering whether any, and if so what, relief ought to be allowed in respect of a dividend paid by the paying company to the investing company, and for the purposes of this section (other than this subsection) such tax or the appropriate part of such tax shall be regarded as external tax paid by the investing company.

(*b*) *Paragraph 8* of *Schedule 24* shall apply for the purpose of ascertaining the amount of the external tax paid by the paying company which is to be taken into account in relation to any dividend paid by the paying company to the investing company as it applies to the computation of foreign tax to be taken into account for the purposes of that paragraph.

(5) (*a*) Nothing in this section shall authorise the granting of relief under this section to any company in respect of any accounting period to such an extent as would reduce the aggregate amount (computed after deduction of any relief to which the company may be entitled in the territory) of the corporation tax and external tax payable by such company in respect of any part of its income of the kind described in *subsection (3)(a)* arising in a territory to which this section applies below the amount of corporation tax which would be payable by the company in respect of that part of its income if that part of its income had arisen in the State and had been liable in the hands of the investing company to corporation tax.

(*b*) In computing for the purposes of *paragraph (a)* the amount of corporation tax which would be so payable by the company in respect of that part of its income if that part had arisen in the State—

(i) no deduction for external tax shall be made from that part of its income, and

(ii) where pursuant to *subsection (4)* external tax paid by the paying company is regarded as external tax paid by the investing company, that part of the investing company's income shall be treated as increased by the amount of the external tax which is so regarded.

(6) Relief under this section shall be given as a credit against corporation tax chargeable by reference to the part of the investing company's income referred to in *subsection (3)(a)*.

(7) (*a*) Any claim for relief under this section shall be made in writing to the inspector not later than 6 years from the end of the accounting period to which it relates.

(*b*) An appeal to the Appeal Commissioners shall lie on any question arising under this section in the like manner as an appeal would lie against an assessment to corporation tax, and the provisions of the Tax Acts relating to appeals shall apply accordingly.

831.—(1) (*a*) In this section—

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Implementation of Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

[FA91 s36]

''arrangements'' means arrangements having the force of law by virtue of *section 826*;

''bilateral agreement'' means any arrangements, protocol or other agreement between the Government and the government of another Member State;

''company'' means a company of a Member State;

''company of a Member State'' has the meaning assigned to it by Article 2 of the Directive;

''the Directive'' means Council Directive No. 90/435/EEC of 23 July 1990[1] on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;

''distribution'' means income from shares or from other rights, not being debt claims, to participate in a company's profits, and includes any amount assimilated to income from shares under the taxation laws of the State of which the company making the distribution is resident;

''foreign tax'' means any tax which—

(i) is payable under the laws of a Member State other than the State, and

(ii) (I) is specified in paragraph (*c*) of Article 2 of the Directive, or

(II) is substituted for and is substantially similar to a tax so specified;

''Member State'' means a Member State of the European Communities;

''parent company'' means a company resident in the State which owns at least 25 per cent of the share capital of a company not so resident, but where a bilateral agreement contains a provision to the effect—

(i) that a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the share capital of the company not resident in the State is owned by the first-mentioned company, or

(ii) that—

(I) the requirement (being the requirement for the purposes of this definition) that a company resident in the State own at least 25 per cent of the share capital of

[1]O.J. No. L225 of 20.8.1990, p.6.

the company not so resident shall be treated as a requirement that the company so resident holds at least 25 per cent of the voting rights in the company not so resident, or

(II) that requirement shall be so treated and a company shall only be a parent company during any uninterrupted period of at least 2 years throughout which at least 25 per cent of the voting rights in the company not resident in the State is held by the first-mentioned company,

then, in its application to a company to which the provision in the bilateral agreement applies, this definition shall apply subject to that provision and shall be construed accordingly.

(*b*) For the purposes of this section, a company shall be a subsidiary of another company which owns shares or holds voting rights in it where the other company's ownership of those shares or holding of those rights is sufficient for that other company to be a parent company.

(*c*) A word or expression used in this section and in the Directive has, unless the contrary intention appears, the same meaning in this section as in the Directive.

(2) Subject to *subsections (3)* and *(4)*, where a parent company receives a distribution chargeable in the State to corporation tax, other than a distribution in a winding up, from its subsidiary—

(*a*) credit shall be allowed for—

(i) any withholding tax charged on the distribution by the Federal Republic of Germany, the Hellenic Republic or the Portuguese Republic, pursuant to the derogations provided for in Article 5 of the Directive, and

(ii) any foreign tax, not chargeable directly or by deduction in respect of the distribution, which is borne by the company making the distribution, and is properly attributable to the proportion of its profits which is represented by the distribution, in so far as that foreign tax exceeds so much of any tax credit in respect of the distribution as is payable to the parent company by the Member State in which the company making the distribution is resident,

against corporation tax in respect of the distribution to the extent that credit for such withholding tax and foreign tax would not otherwise be so allowed, and

(*b*) notwithstanding *Chapter 2* of *Part 4*, the distribution shall not be a dividend to which that Chapter applies.

(3) Where by virtue of *subsection (2)(a)* a company is to be allowed credit for tax payable under the laws of a Member State

other than the State, *Schedule 24* shall apply for the purposes of that subsection as if— Pt.35 S.831

(*a*) the provisions of that subsection were arrangements providing that tax so payable shall be allowed as a credit against tax payable in the State, and

(*b*) references in *Schedule 24* to a dividend were references to a distribution within the meaning of this section.

(4) *Subsection (2)* shall apply without prejudice to any provision of a bilateral agreement.

Provisions in relation to Convention for reciprocal avoidance of double taxation in the State and the United Kingdom of income and capital gains.

[FA77 s39(1) and (3) to (5); FA96 s132(2) and Sch5 PtII]

832.—(1) In this section—

''the Convention'' means the Convention between the Government of Ireland and the Government of the United Kingdom for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, and the Protocol amending the Convention, both of which are set out in the Schedule to the Double Taxation Relief (Taxes on Income and Capital Gains) (United Kingdom) Order, 1976 (S.I. No. 319 of 1976);

''dividend'' means a dividend within the meaning of Article 11(4) of the Convention.

(2) Subject to *sections 70* and *71* as modified by *section 73*, where a person is chargeable to income tax or corporation tax under Case III of Schedule D on income which is a dividend in respect of which the person is entitled to a tax credit under Article 11(2)(*b*) of the Convention, the income so chargeable shall include the amount of the tax credit.

(3) For the purpose of giving effect to the Convention, the Tax Acts shall, for any year for which the Convention is in force, apply subject to the modifications in *section 73*.

(4) (*a*) In applying *section 707* in the case of a society registered under the enactments for the time being in force in the United Kingdom corresponding to the Friendly Societies Acts, 1896 to 1977, only expenses of management attributable to the life business referable to contracts of assurance made on or after the 6th day of April, 1976, shall be taken into account.

(*b*) In applying *subsection (4)* of *section 726* in the case of a society referred to in *paragraph (a)*, there shall be excluded from the liabilities of which B in that subsection is the average any liabilities to policy holders arising from contracts made before the 6th day of April, 1976.

(*c*) This subsection shall be construed as one with *Part 26*.

Convention with United States of America.

[ITA67 s358(2) and (3).]

833.—(1) *Schedule 24* shall apply for the purposes of giving effect to the Convention set out in *Schedule 25* concluded on the 13th day of September, 1949, between the Government of Ireland and the Government of the United States of America.

(2) The Revenue Commissioners may from time to time make regulations in relation to the granting of the reliefs specified in the Convention and may in particular by those regulations provide—

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(*a*) for securing that no such reliefs from taxation imposed by the laws of the United States of America as are provided for in the Convention shall enure to the benefit of persons not entitled to such reliefs, and

(*b*) for authorising, in cases where tax deductible from any periodical payment has, in order to comply with the terms of the Convention, not been deducted and it is discovered that the Convention does not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Relief in respect of ships documented under laws of United States of America.

[ITA67 s359]

834.—Exemption shall be granted from tax in respect of so much of the income of a citizen of the United States of America not resident in the State or of a corporation organised in the United States of America as is derived from the operation of a ship or ships documented under the laws of the United States of America.

Saver for arrangements made under section 362 of Income Tax Act, 1967.

[FA87 s23(2)]

835.—Notwithstanding the repeal of section 362 of the Income Tax Act, 1967, by section 23(1) of the Finance Act, 1987, where before the 9th day of July, 1987, an order was made under section 362 of the Income Tax Act, 1967, the arrangement to which the order relates shall continue to have the force of law.

PART 36

Miscellaneous Special Provisions

Allowances for expenses of members of Oireachtas.

[Section 4 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992]

836.—(1) An allowance payable under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

(2) *Sections 114* and *115* shall not apply in relation to expenses in full settlement of which an allowance is payable under section 3 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and no claim shall lie under those sections in respect of those expenses; but where a Minister of the Government, the Attorney General or a Minister of State, being—

(*a*) a member of Dáil Éireann for a constituency outside the county borough and the administrative county of Dublin, or

(*b*) a member of Seanad Éireann whose main residence is situated outside that county borough and administrative county,

is, arising out of the performance of his or her duties as an office holder or as a member of the Oireachtas, obliged to maintain a second residence in addition to his or her main residence, he or she shall be granted a deduction under *section 114* in respect of expenses incurred by him or her in maintaining that second residence.

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Members of the clergy and ministers of religion.

837.—In assessing the income tax chargeable under any Schedule on a member of the clergy or minister of any religious denomination, the following deductions may be made from any profits, fees or emoluments of his or her profession—

[ITA67 s544(1); FA69 s65(1) and Sch5 PtI]

(*a*) any sums of money paid or expenses incurred by him or her wholly, exclusively and necessarily in the performance of his or her duty as a member of the clergy or minister of any religious denomination;

(*b*) such part of the rent (not exceeding one-eighth), as the inspector by whom the assessment is made may allow, paid by him or her in respect of a dwelling house any part of which is used mainly and substantially for the purposes of his or her duty as a member of the clergy or minister of any religious denomination.

Special portfolio investment accounts.

838.—(1) (*a*) In this section—

[FA93 s14 (other than proviso to sub(4)(c) and sub(6)(b)); FA94 s12(2) and s34(b); FA95 s11(2); FA96 s37(1); FA97 s31, s146(1) and Sch9 PtI par17(1)]

''designated broker'' means a person—

(i) which is a dealing member firm of the Irish Stock Exchange or a member firm (which carries on a trade in the State through a branch or agency) of a stock exchange of any other Member State of the European Communities, and

(ii) which has sent to the Revenue Commissioners a notification of its name and address and of its intention to accept specified deposits;

''gains'' means chargeable gains within the meaning of the Capital Gains Tax Acts, including gains which but for *section 607* would be chargeable gains;

''market value'' shall be construed in accordance with *section 548*;

''ordinary shares'' means shares forming part of a company's ordinary share capital;

''qualifying shares'' means ordinary shares in a company which are—

(i) listed in the official list of the Irish Stock Exchange, or

(ii) quoted on the market known as the Developing Companies Market, or the market known as the Exploration Securities Market, of the Irish Stock Exchange,

other than—

(I) shares in an investment company within the meaning of Part XIII of the Companies Act, 1990,

(II) shares in an undertaking for collective investment in transferable securities within the

meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), or

(III) shares in a company, being shares the market value of which may be expected to approximate at all times to the market value of the proportion of the assets of the company which they represent;

''relevant income or gains'' means the aggregate of the income and gains, including losses, arising from relevant investments, but only so much of income arising to or gains accruing to the special portfolio investment account shall be relevant income or gains as is or is to be—

(i) paid to, or

(ii) accumulated or invested for the benefit of,

the individual in whose name the special portfolio investment account is held, or would be so paid, accumulated or invested if any gains accruing to the account in accordance with *subsection (4)(e)* were gains on an actual disposal of the assets concerned;

''relevant investment'' means an investment in—

(i) qualifying shares and specified qualifying shares, or

(ii) qualifying shares, specified qualifying shares and securities,

as the case may be, acquired by a designated broker by the expenditure of money contributed by means of a specified deposit, and held by a designated broker in a special portfolio investment account;

''securities'' means securities—

(i) issued under the authority of the Minister for Finance, or

(ii) issued by the Electricity Supply Board, Radio Telefís Éireann, ICC Bank plc, Bord Telecom Éireann, Irish Telecommunications Investments plc, Córas Iompair Éireann, ACC Bank plc, Bord na Móna, Aerlínte Éireann cuideachta phoiblí theoranta, Aer Lingus plc or Aer Rianta cuideachta phoiblí theoranta,

which are listed in the official list of the Irish Stock Exchange;

''special portfolio investment account'' means an account opened on or after the 1st day of February, 1993, in which a relevant investment is held and in respect of which the conditions referred to in *paragraph (c)* are complied with;

''specified deposit'' means a sum of money paid by an individual to a designated broker for the purpose of acquiring assets which will form part of a relevant investment;

''specified qualifying shares'', in relation to a special portfolio investment account, means qualifying shares in a company which when the shares are acquired for the account has an issued share capital the market value of which is less than £100,000,000.

(*b*) For the purposes of this section, *Chapter 4* of *Part 8* shall be construed as if—

(i) references to ''deposit'', ''interest'', ''relevant deposit'', ''relevant deposit taker'', ''relevant interest'' and ''special savings account'' were respectively references to ''specified deposit'', ''income or gains'', ''relevant investment'', ''designated broker'', ''relevant income or gains'' and ''special portfolio investment account'' within the meaning of this section, and

(ii) *subsections (4)* and *(5)* of *section 258* and *section 259* had not been enacted.

(*c*) Notwithstanding *subsection (3)*, *section 264* shall apply to a special portfolio investment account as if—

(i) *paragraphs (d)* to *(i)* of *subsection (1*) of that section had not been enacted, and

(ii) the conditions in *subsection (2)* of this section had been included in *subsection (1)* of that section.

(2) The conditions referred to in *subsection (1)(c)(ii)* are:

(*a*) each special portfolio investment account and all assets held in such an account shall be kept separately from all other investment accounts, if any, operated by a designated broker;

(*b*) the amount of a specified deposit or, if there is more than one, the aggregate of such amounts in respect of assets held at the same time as part of a special portfolio investment account shall not exceed—

(i) in the case of a special portfolio investment account in respect of which—

(I) the first specified deposit was made on or before the 5th day of April, 2000, and

(II) an amount (in this paragraph referred to as ''the particular amount'') equal to the whole or a part of the specified deposit or specified deposits has been used to acquire shares in a company quoted on the market known as the Developing Companies Market of the Irish Stock Exchange

and those shares are at that time held as assets of the special portfolio investment account,

£50,000 increased by the lesser of—

(A) the particular amount, and

(B) £10,000,

and

(ii) in the case of any other special portfolio investment account, £50,000;

(*c*) the designated broker shall ensure that the aggregate of the market value of a relevant investment does not exceed £50,000 at any time on or after the fifth anniversary of the date on which the first specified deposit was made by an individual in respect of that relevant investment;

(*d*) the aggregate of the consideration given for shares which are at any time before the 1st day of February, 1994, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 40 per cent, and

(ii) as respects specified qualifying shares, 6 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(*e*) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1995, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 45 per cent, and

(ii) as respects specified qualifying shares, 9 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(*f*) the aggregate of the consideration given for shares which are at any time within the year ending on the 31st day of January, 1996, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 50 per cent, and

(ii) as respects specified qualifying shares, 10 per cent,

of the aggregate of the consideration given for the assets of the account at that time;

(*g*) the aggregate of the consideration given for shares which are at any time on or after the 1st day of February, 1996, assets of a special portfolio investment account shall not be less than—

(i) as respects qualifying shares, 55 per cent, and

(ii) as respects specified qualifying shares, 10 per cent, Pt.36 S.838

of the aggregate of the consideration given for the assets of the account at that time;

and for the purposes of—

(I) *paragraphs (b)* and *(c)*, a disposal of shares or securities, being shares or securities, as the case may be, of the same class acquired for a special portfolio investment account at different times, shall be assumed to be a disposal of shares or securities, as the case may be, acquired later, rather than of shares or securities, as the case may be, acquired earlier for the special portfolio investment account, and

(II) *paragraphs (d)* to *(g)*, the amount of the consideration given for shares shall be determined in accordance with *sections 547* and *580*.

(3) *Chapter 4* of *Part 8* (other than *section 259*) shall, subject to this section and with any other necessary modifications, apply to special portfolio investment accounts as it applies to special savings accounts; but that Chapter shall so apply as if, in relation to relevant interest payable in respect of a relevant deposit or relevant deposits held in a special savings account, the rate of appropriate tax were 10 per cent.

(4) (*a*) *Paragraphs (b)* to *(h)* shall apply notwithstanding any other provision of the Tax Acts and the Capital Gains Tax Acts.

(*b*) Where for any year of assessment a loss arises from the computation of relevant income or gains, that loss shall be included in the computation of the relevant income or gains of the special portfolio investment account for the next year of assessment, and, in so far as relief for the loss cannot be so given, it shall be set against such relevant income or gains in the next year of assessment and, where appropriate, in each subsequent year of assessment in so far as it cannot be so relieved, and no further relief shall be allowed under any provision of the Tax Acts or the Capital Gains Tax Acts in respect of that loss.

(*c*) *Sections 556*, *601*, *607* and *1028(4)* shall not apply in relation to any gains referable to a relevant investment.

(*d*) (i) In this paragraph—

"the appropriate amount in respect of the interest" means the appropriate amount in respect of the interest which would be determined in accordance with *Schedule 21* if the designated broker were the first buyer and the designated broker carried on a trade to which *section 749(1)* applies; but, in so determining the appropriate amount in respect of the interest in accordance with *Schedule 21*, *paragraph 3(4)* of that Schedule shall apply as if "in the opinion of the Appeal Commissioners" were deleted;

"securities" has the same meaning as in *section 815*.

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(ii) Subject to *subparagraph (iii)*, where—

(I) in a year of assessment (in this subparagraph referred to as ''the first year of assessment'') securities which are assets of a special portfolio investment account are disposed of, and

(II) in the following year of assessment interest becoming payable in respect of the securities is receivable by the special portfolio investment account,

then, for the purposes of computing the relevant income or gains for the first year of assessment, the price paid by the designated broker for the securities shall be treated as reduced by the appropriate amount in respect of the interest.

(iii) Where for a year of assessment *subparagraph (ii)* applies so as to reduce the price paid for securities, the amount by which the price paid for the securities is reduced shall be treated as a loss arising in the following year of assessment from the disposal of the securities.

(*e*) For the purpose of computing relevant income or gains of a special portfolio investment account for a year of assessment, each asset of a special portfolio investment account on the 5th day of April in that year of assessment shall be deemed to have been disposed of and immediately reacquired by the designated broker on that day at the asset's market value on that day.

(*f*) *Subject to subsection (5)*, where in a year of assessment the relevant income or gains of a special portfolio investment account includes a distribution from a company resident in the State—

(i) the aggregate of the amount or value of that distribution and the amount of the tax credit in respect of that distribution shall be taken into account in computing the relevant income or gains for that year of assessment, and

(ii) the designated broker may set the tax credit against appropriate tax payable in respect of that special portfolio investment account for the year of assessment in which the distribution is made and, where the tax credit exceeds that appropriate tax, may claim to have the excess paid to the designated broker in that person's capacity as the designated broker for that special portfolio investment account.

(*g*) A tax credit in respect of a distribution to which *paragraph (f)* applies shall not be available for any purpose other than that specified in that paragraph.

(*h*) Capital gains tax shall not be chargeable on the disposal of assets held as part of a relevant investment; but this paragraph shall not prevent any such disposals from being taken into account in computing the amount of relevant income or gains on which appropriate tax is payable.

(5) (*a*) In this subsection—

''eligible shares'' has the same meaning as in *section 488*;

''qualifying company'' has the meaning assigned to it by *section 495*.

(*b*) Without prejudice to the treatment of losses on eligible shares as allowable losses, gains accruing on the disposal or deemed disposal of eligible shares in a qualifying company shall not for the purposes of computing appropriate tax in accordance with *subsection (6)* be treated as gains.

(*c*) Distributions included in the relevant income or gains of a special portfolio investment account in respect of eligible shares in qualifying companies shall not be taken into account in computing appropriate tax in accordance with *subsection (6)*; but, notwithstanding *subsection (4)(f)* or *section 136*, the tax credit in respect of a distribution to which this subsection applies shall be disregarded for the purposes of the Tax Acts and the Capital Gains Tax Acts.

(6) (*a*) For the purposes of *sections 257* and *258*, a designated broker shall, in relation to each special portfolio investment account—

(i) be deemed to have made a payment on the 5th day of April in each year of assessment of the amount of relevant income or gains for that year of assessment, and

(ii) be liable to make a payment of appropriate tax in relation to such payment.

(*b*) The designated broker may deduct an amount on account of any such payment of appropriate tax and the individual beneficially entitled to the assets in the special portfolio investment account shall allow such deduction from any income or from the proceeds of the sale of any assets which the designated broker holds as part of the special portfolio investment account; but, where there are no such funds or insufficient funds available out of which the designated broker may satisfy the appropriate tax, the amount of such tax shall be an amount due to the designated broker from the person beneficially entitled to the relevant investment.

(*c*) For the purposes of this section, *section 258* shall apply as if in *subsection (2)* of that section ''on or before the 1st day of November following that year of assessment'' were substituted for ''within 15 days from the end of the year of assessment''.

(7) *Part 16* shall not apply in relation to any shares which form part of a relevant investment.

Limits to special investments.

[FA93 s16; FA94 s34(c) to (g)]

839.—(1) Subject to *subsection (2)*, an individual shall not at the same time have a beneficial interest in investments of more than one of the following classes of investment—

(*a*) special savings accounts within the meaning of *section 256(1)* (such an account being referred to subsequently in this section as a ''special savings account'');

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(*b*) special investment policies within the meaning of *section 723(1)*;

(*c*) special investment units within the meaning of *section 737*;

(*d*) special portfolio investment accounts within the meaning of *section 838*.

(2) (*a*) An individual, whether married or not, who does not have a joint interest in an investment of a class mentioned in *subsection (1)* may have a beneficial interest, that is not a joint interest, in 2 such investments, being a special savings account and an investment of a class mentioned in *paragraph (b)*, *(c)* or *(d)* of that subsection, during a period throughout which—

(i) as respects the special savings account, the condition specified in *section 264(1)(i)* would be satisfied if ''£25,000'' were substituted for ''£50,000'' in that condition, or

(ii) as respects the other investment, the condition specified in *section 723(3)(b)*, *737(3)(a)(ii)* or *838(2)(b)* relevant to that investment would be satisfied if ''£25,000'' were substituted for ''£50,000'' in those conditions.

(*b*) A couple married to each other, neither of whom has an interest, that is not a joint interest, in an investment of a class mentioned in *subsection (1)*, may have a joint beneficial interest—

(i) in 2 or 3 such investments, so long as those investments include a special savings account and an investment of a class mentioned in *paragraph (b)*, *(c)* or *(d)* of that subsection, or

(ii) in 4 such investments, being 2 special savings accounts and 2 other investments of a class (which need not be the same class for the 2 investments) mentioned in *paragraph (b)*, *(c)* or *(d)* of that subsection, during a period throughout which—

(I) as respects the special savings accounts, the condition specified in *section 264(1)(i)* would be satisfied if ''£25,000'' were substituted for ''£50,000'' in that condition, or

(II) as respects the other investments, the condition specified in *section 723(3)(b)*, *737(3)(a)(ii)* or *838(2)(b)* relevant to each of those investments would be satisfied if ''£25,000'' were substituted for ''£50,000'' in those conditions.

(3) So long as an individual, whether married or not, does not have a beneficial interest in an investment of a class mentioned in *subsection (1)* other than—

(*a*) a beneficial interest, whether or not a joint interest, in one investment, or

(*b*) a joint beneficial interest in 2 investments,

of a class (which need not be the same class where there are 2 investments) mentioned in *paragraph (b)*, *(c)* or *(d)* of *subsection (1)*, then, *sections 723*, *737* and *838* shall apply to that one investment or those 2 investments, as the case may be, as if every reference to £50,000 in those sections were a reference to £75,000. PT.36 S.839

(4) Where an individual may hold a beneficial interest, whether jointly or otherwise, in an investment of a class mentioned in *subsection (1)* only for as long as a condition specified in the Tax Acts in respect of the investment would be satisfied if a reference to £25,000 were substituted for a reference to £50,000 in the condition so specified, then, any provision of those Acts which apart from this subsection would have the effect at any time of restricting that investment to an investment the value of which does not exceed £50,000 shall apply to that investment as if the reference to £50,000 in the provision were a reference to £25,000.

(5) Any declaration referred to in—

(*a*) *paragraph (b)* of the definition of ''special savings account'' in *section 256(1)*,

(*b*) *paragraph (b)* of the definition of ''special investment policy'' in *section 723(1)*, or

(*c*) *paragraph (b)* of the definition of ''special investment units'' in *section 737(1)*,

shall contain—

(i) such information in relation to the beneficial interest, which at the time the declaration is made the individual making the declaration holds, whether jointly or otherwise, in investments of a class mentioned in *subsection (1)*, and

(ii) such undertakings, to the person to whom the declaration is made, to supply at any later time information in relation to such interests of that individual at that later time,

as the Revenue Commissioners may reasonably require for the purposes of this section.

840.—(1) In this section— Business entertainment.

[FA 82 s20(1) to (6) and (8)]

''business entertainment'' means entertainment (including the provision of accommodation, food and drink or any other form of hospitality in any circumstances whatever) provided directly or indirectly by—

(*a*) any person (in this definition referred to as ''the first-mentioned person''),

(*b*) any person who is a member of the first-mentioned person's staff, or

(*c*) any person providing or performing any service for the first-mentioned person, the entertainment being entertainment that is provided in the course of, or is incidental to, the provision or performance of the service,

in connection with a trade carried on by the first-mentioned person, but does not include anything provided by that person for bona fide

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members of that person's staff unless its provision for them is incidental to its provision also for others;

a reference to expenses incurred in, or to the use of an asset for, providing entertainment includes a reference to expenses incurred in, or to the use of an asset for, providing anything incidental thereto;

a reference to a trade includes a reference to a business, profession or employment;

a reference to the members of a person's staff is a reference to persons employed by the person, directors of a company or persons engaged in the management of the company being for this purpose deemed to be persons employed by the company.

(2) In respect of any expenses incurred in providing business entertainment, no sum shall be—

(*a*) deducted in computing the amount of profits or gains chargeable to tax under Schedule D,

(*b*) included in computing any expenses of management in respect of which a deduction may be claimed under *section 83* or *707*, or

(*c*) allowed under *section 114*.

(3) (*a*) In this subsection, ''the specified provisions'' means the provisions of *Part 9* relating to machinery or plant.

(*b*) Where any asset is used or is provided for use wholly or partly for the purpose of providing business entertainment, no allowance under any of the specified provisions shall be made for any year of assessment or for any accounting period of a company in respect of the use of the asset or the expenditure incurred in the provision of the asset to the extent that it is used or is to be used for that business entertainment.

(4) The expenses to which *subsection (2)* applies include in the case of any person any sum paid by that person to, on behalf of or placed by that person at the disposal of a member of that person's staff for the purpose of defraying expenses incurred or to be incurred by the member of the staff in providing business entertainment.

(5) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment.

(6) (*a*) Where by reason of the provision or performance of a service an amount is paid or payable to a person referred to in *paragraph (c)* of the definition of ''business entertainment'', so much of the amount as is equal to the cost of any business entertainment that is provided in the course of, or is incidental to the provision or performance of, the service shall be deemed to be incurred in providing business entertainment.

(*b*) The cost of any business entertainment shall be determined by the inspector according to the best of his or her knowledge and judgment.

(*c*) A determination made under *paragraph (b)* may be amended by the Appeal Commissioners or by the Circuit

Court on the hearing or the rehearing of an appeal against any deduction (including a case where no deduction is granted) granted on the basis of the determination.

Voluntary Health Insurance Board: restriction of certain losses and deemed disposal of certain assets.

[FA97 s61(1), (3) and (4)]

841.—(1) In this section—

''the Board'' means the Voluntary Health Insurance Board;

''market value'' shall be construed in accordance with *section 548*.

(2) *Section 396* shall not apply to a loss incurred by the Board in an accounting period ending before the 1st day of March, 1997.

(3) Notwithstanding any other provision of the Tax Acts, bonds and shares held by the Board on the 28th day of February, 1997, in the course of the business of carrying out schemes of voluntary health insurance shall be deemed to have been disposed of and immediately reacquired by the Board on that date at the assets' market value on that date.

Replacement of harbour authorities by port companies.

[FA97 s48]

842.—(1) In this section, ''relevant port company'' has the same meaning as in *paragraph 1* of Schedule 26.

(2) *Schedule 26* shall apply where assets are vested in, or transferred to, a relevant port company pursuant to the Harbours Act, 1996.

(3) This section and *Schedule 26* shall apply from the 1st day of March, 1997.

Capital allowances for buildings used for third level educational purposes.

[FA97 s25]

843.—(1) In this section—

''approved institution'' means an institution in the State in receipt of public funding which provides courses to which a scheme approved by the Minister for Education and Science under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, applies;

''qualifying expenditure'' means capital expenditure incurred on—

(*a*) the construction of a qualifying premises, or

(*b*) the provision of machinery or plant,

which, following receipt of the advice of An tÚdarás, is approved for that purpose by the Minister for Education and Science with the consent of the Minister for Finance;

''qualifying premises'' means a building or structure which—

(*a*) apart from this section is not an industrial building or structure within the meaning of *section 268*, and

(*b*) (i) is in use for the purposes of third level education provided by an approved institution,

(ii) is let to an approved institution on bona fide commercial terms for such consideration as might be expected to be paid in a letting of the building or structure which was negotiated on an arm's length basis,

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but does not include any part of a building or structure in use as or as part of a dwelling-house;

"An tÚdarás" means the Body established by section 2 of the Higher Education Authority Act, 1971.

(2) Subject to *subsections (3)* to *(7)*, the provisions of the Tax Acts (other than *section 317(2))* relating to the making of allowances or charges in respect of capital expenditure incurred on the construction of an industrial building or structure shall, notwithstanding anything to the contrary in those provisions, apply in relation to qualifying expenditure on a qualifying premises—

(*a*) as if the qualifying premises were, at all times at which it is a qualifying premises, a building or structure in respect of which an allowance is to be made for the purposes of income tax or corporation tax, as the case may be, under *Part 9* by reason of its use for a purpose specified in *section 268(1)(a)*, and

(*b*) where any activity carried on in the qualifying premises is not a trade, as if it were a trade.

(3) In relation to qualifying expenditure on a qualifying premises *section 272* shall apply as if—

(*a*) in *subsection (3)(a)(ii)* of that section the reference to 4 per cent were a reference to 15 per cent, and

(*b*) in *subsection (4)(a)(ii)* of that section the reference to 25 years were a reference to 7 years.

(4) No allowance shall be made under *subsection (2)* unless, before the commencement of construction of a qualifying premises, the Minister for Finance certifies that—

(*a*) an approved institution has procured or otherwise secured a sum of money, none of which has been met directly or indirectly by the State, which sum is not less than 50 per cent of the qualifying expenditure to be incurred on the qualifying premises, and

(*b*) such sum is to be used solely by the approved institution for the following purposes—

(i) paying interest on money borrowed for the purpose of funding the construction of the qualifying premises,

(ii) paying any rent on the qualifying premises during such times as the qualifying premises is the subject of a letting on such terms as are referred to in *paragraph (b)(ii)* of the definition of "qualifying premises", and

(iii) purchasing the qualifying premises following the termination of the letting referred to in *subparagraph (ii)*.

(5) Notwithstanding *section 274(1)*, no balancing charge shall be made in relation to a qualifying premises by reason of any of the events specified in that section which occurs more than 7 years after the qualifying premises was first used.

(6) This section shall come into operation on the 1st day of July, 1997. PT.36 S.843

(7) The Minister for Finance may not give a certificate under *subsection (4)* at any time later than the 1st day of July, 2000.

Companies carrying on mutual business or not carrying on a business.

[CTA76 s29]

844.—(1) Subject to *subsection (2)*, where a company carries on any business of mutual trading or mutual insurance or other mutual business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall apply to distributions made by the company, notwithstanding that they are made to persons participating in the mutual activities of that business and derive from those activities, but shall so apply only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

(2) In the case of a company carrying on any mutual life assurance business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall not apply to distributions made to persons participating in the mutual activities of that business and derived from those activities; but, if the business includes annuity business, the annuities payable in the course of that business shall not be treated as charges on the income of the company to any greater extent than if that business were not mutual but were being carried on by the company with a view to the realisation of profits for the company.

(3) Subject to *subsections (1)* and *(2)*, the fact that a distribution made by a company carrying on any such business is derived from the mutual activities of that business and the recipient is a person participating in those activities shall not affect the character which the payment or other receipt has for the purposes of corporation tax or income tax in the hands of the recipient.

(4) Where a company does not carry on and never has carried on a trade or a business of holding investments, and is not established for purposes which include the carrying on of a trade or of such a business, the provisions of the Corporation Tax Acts and of Schedule F relating to distributions shall apply to distributions made by the company only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income.

Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc.

[CTA76 s51(1), (2), (3)(a), (4), (5) and (6)]

845.—(1) In this section, ''insurance business'' includes assurance business within the meaning of section 3 of the Insurance Act, 1936.

(2) In this section and in *section 846*, ''tax-free securities'' means securities to which *section 43*, *49* or *50* applies and which were issued with a condition regulating the treatment of the interest on the securities for tax purposes such that the interest on the securities is excluded in computing income or profits.

(3) (*a*) In this subsection, ''securities'' includes stocks and shares.

(*b*) Where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is carried on in the State by a person not resident in the State, then—

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(i) in computing for the purposes of the Tax Acts the profits arising from, or loss sustained in, the business, and

(ii) in the case of an insurance business, also in computing the profits or loss from pension business and general annuity business under *section 715*,

section 76 shall not prevent the inclusion of interest, dividends and other payments to which *section 35* or *63* extends notwithstanding the exemption from tax conferred by those sections respectively.

(4) Where—

(*a*) any business referred to in *subsection (3)(b)* is carried on in the State by a person not ordinarily resident in the State, and

(*b*) in making any computation referred to in that subsection with respect to that business, interest on tax-free securities is excluded by virtue of a condition of the issue of such securities,

any expenses attributable to the acquisition or holding of, or to any transaction in, the securities (but not including in those expenses any interest on borrowed money), and any profits or losses so attributable, shall also be excluded in making that computation.

(5) In the case of an overseas life assurance company (within the meaning of *section 706*), in computing for the purposes of *section 726* the income from the investments of the life assurance fund of the company, any interest, dividends and other payments to which *section 35* or *63* extends shall be included notwithstanding the exemption from tax conferred by those sections respectively.

Tax-free securities: exclusion of interest on borrowed money.

[CTA76 s52(1) to (4) and (6)]

846.—(1) This section shall apply where *section 845(4)* applies to a business for any accounting period.

(2) Up to the amount determined under this section (in this section referred to as ''the amount ineligible for relief''), interest becoming due for payment on money borrowed for the purposes of the business—

(*a*) shall be excluded in any computation under the Tax Acts of the profits or loss arising from the business, and

(*b*) shall be excluded from the definition of ''charges on income'' in *section 243*.

(3) In determining the amount ineligible for relief, account shall be taken of all money borrowed for the purposes of the business outstanding in the accounting period up to the total cost of the tax-free securities held for the purposes of the business in that period; but account shall not be taken of any borrowed money carrying interest which apart from *subsection (2)* would not be included in the computation under *paragraph (a)* of that subsection and would not be treated as a charge on income for the purposes of the Corporation Tax Acts.

(4) The amount ineligible for relief shall be equal to a year's interest on the amount of money borrowed which is to be taken into

account under *subsection (3)* at a rate equal to the average rate of interest in the accounting period on money borrowed for the purposes of the business, except that in the case of an accounting period of less than 12 months interest shall be taken for that shorter period instead of for a year. Pt.36 S.846

(5) For the purposes of this section, the cost of a holding of tax-free securities which has fluctuated in the accounting period shall be the average cost of acquisition of the initial holding, and of any subsequent acquisitions in the accounting period, applied to the average amount of the holding in the accounting period, and this subsection shall be applied separately to securities of different classes.

847.—(1) (*a*) In this section— Tax relief for certain branch profits.

[FA95 s29]

''investment plan'' means a plan of a company resident in the State—

(i) which involves the investment by the company or by a company associated with it of substantial permanent capital in the State for the purposes of the creation before a date specified in the plan of substantial new employment in the State in trading operations carried on or to be carried on in the State by the company or the company associated with it, and

(ii) which has been submitted before the commencement of its implementation to the Minister by the company for the purpose of enabling it to obtain relief under this section;

''the Minister'' means the Minister for Finance;

''qualified company'' means a company to which the Minister, following consultation with the Minister for Enterprise and Employment, has given a certificate, which certificate has not been revoked, under *subsection (2)*;

''qualified foreign trading activities'' means trading activities carried on by a qualified company through a branch or agency outside the State in a territory specified in the certificate given under *subsection (2)* to the company by the Minister following consultation with the Minister for Enterprise, Trade and Employment.

(*b*) For the purposes of this section—

(i) a company shall be associated with another company where one of the companies is a 75 per cent subsidiary of the other company or both companies are 75 per cent subsidiaries of a third company; but, in determining whether one company is a 75 per cent subsidiary of another company, the other company shall be treated as not being the owner of—

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(I) any share capital which it owns directly in a company if a profit on the sale of the shares would be treated as a trading receipt of its trade, or

(II) any share capital which it owns indirectly and which is owned directly by a company for which a profit on the sale of the shares would be a trading receipt,

(ii) *sections 412* to *418* shall apply for the purposes of this paragraph as they would apply for the purposes of *Chapter 5* of *Part 12* if *section 411(1)(c)* were deleted,

(iii) where a trade carried on by a qualified company consists partly of qualified foreign trading activities and partly of other trading activities, the company shall be treated as if it were carrying on distinct trades consisting of such qualified foreign trading activities and of such other trading activities,

(iv) there shall be attributed to each trade carried on, or treated under *subparagraph (iii)* as carried on, such profits or gains or losses as might have been expected to be made if each trade had been carried on under the same or similar conditions by a person independent of, and dealing at arm's length with, the person carrying on the other trade, and

(v) there shall be made all necessary apportionments as are just and reasonable for the purposes of computing—

(I) profits or gains or losses arising from, and

(II) the amount of any charges on income, expenses of management or other amount which can be deducted from or set off against or treated as reducing profits of more than one description as is incurred for the purposes of,

a trade carried on, or treated under *subparagraph (iii)* as carried on, by a qualified company.

(2) Where a plan has been duly submitted by a company resident in the State and the Minister, following consultation with the Minister for Enterprise, Trade and Employment, is satisfied that—

(*a*) the plan is an investment plan,

(*b*) the company, or a company associated with it, will, before a date specified in the plan and approved by the Minister, make the substantial permanent capital investment in the State under the investment plan for the purposes of the creation of the substantial new employment in the State,

(*c*) the creation of substantial new employment in the State under the investment plan will be achieved, and

(*d*) the maintenance of the employment so created in trading operations in the State will be dependent on the carrying on by the company of qualified foreign trading activities,

then, the Minister may give a certificate certifying that the company is a qualified company with effect from a date specified in the certificate.

(3) (*a*) The Minister shall draw up guidelines for determining whether for the purposes of *subsection (2)* a company and companies associated with it will create substantial new employment and will make a substantial permanent capital investment in the State.

(*b*) Without prejudice to the generality of *paragraph (a)*, guidelines under that paragraph may—

(i) include a requirement for specified levels of—

(I) employment in the State, and

(II) permanent capital investment in the State,

and

(ii) specify such criteria for the purposes of this subsection as the Minister considers appropriate.

(4) A certificate issued under *subsection (2)* may be given subject to such conditions as the Minister, following consultation with the Minister for Enterprise, Trade and Employment, considers proper and specifies in the certificate.

(5) Where in the case of a company in relation to which a certificate under *subsection (2)* has been given the Minister, following consultation with the Minister for Enterprise, Trade and Employment, forms the opinion that such certificate ought to be revoked because any condition subject to which the certificate was given has not been complied with, the Minister may by notice in writing served by registered post on the company revoke the certificate with effect from such date as may be specified in the notice.

(6) Notwithstanding any other provision of the Corporation Tax Acts—

(*a*) profits or gains or losses arising from the carrying on of qualified foreign trading activities shall be disregarded for the purposes of those Acts, and

(*b*) no amount of any charges on income, expenses of management or other amount which apart from this paragraph may be deducted from or set off against or treated as reducing profits of more than one description, shall be so deducted, set off or treated, as is incurred for the purposes of a trade carried on, or treated under *subsection (1)(b)(iii)* as carried on, by a qualified company which consists of qualified foreign trading activities.

(7) A gain shall not be a chargeable gain for the purposes of the Capital Gains Tax Acts if it accrues to a qualified company on the

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disposal of an asset, other than an asset specified in *paragraphs (a)* to *(d)* of *section 980(2)*, used wholly and exclusively for the purposes of a trade carried on, or treated under *subsection (1)(b)(iii)* as carried on, by a qualified company which consists of qualified foreign trading activities.

(8) An inspector may by notice in writing require a qualified company to furnish him or her with such information or particulars as may be necessary for the purposes of giving relief under this section.

Designated charities: repayment of tax in respect of donations.

[FA95 s8(1)(a) and (c) and (2) to (7)]

848.—(1) (*a*) In this section—

"appropriate certificate", in relation to a donation to a designated charity, means a certificate which is in such form as the Revenue Commissioners may prescribe and which contains—

(i) statements to the effect that—

(I) the donation satisfies the requirements of *subsection (6)*, and

(II) the donor has paid or will pay to the Revenue Commissioners income tax of an amount equal to income tax at the standard rate for the relevant year of assessment on the grossed up amount of the donation, but not being—

(A) income tax which the donor is entitled to charge against any other person or to deduct, retain or satisfy out of any payment which the donor is liable to make to any other person, or

(B) appropriate tax within the meaning of *Chapter 4* of *Part 8*,

and

(ii) the identifying number, known as the Revenue and Social Insurance (RSI) Number, of the donor;

"designated charity" means any body or institution in the State which, following application by it to the Minister in such form and containing such information as the Minister may require, is designated for the purposes of this section by the Minister with the consent of the Minister for Finance;

"the Minister" means the Minister for Foreign Affairs;

"qualifying donation" shall be construed in accordance with *subsection (5)*;

"relevant year of assessment", in relation to a qualifying donation, means the year of assessment in which the qualifying donation is made.

(*b*) For the purposes of this section, references, in relation to a donation, to the grossed up amount are to the amount which after deducting income tax at the standard rate for the relevant year of assessment leaves the amount of the donation. Pt.36 S.848

(2) A body or institution shall not be designated by the Minister for the purposes of this section unless it shows to the satisfaction of the Minister that—

(*a*) it is a body of persons or trust established for charitable purposes only,

(*b*) it has been granted exemption from tax for the purposes of *section 207* for a period of not less than 3 years before the date of the making of the application,

(*c*) the person concerned in the management or control of the body or institution ensures that in respect of each financial year of the body or institution there is prepared and furnished to the Minister—

(i) audited accounts comprising—

(I) an income and expenditure account or a profit and loss account, as appropriate, for its most recent financial year, and

(II) a balance sheet as at the last day of that financial year,

and

(ii) a report as to the activities of the body or institution, having regard to its charitable purposes, and

(*d*) it has as its sole object, relief and development in a country or countries where the country or countries concerned is or are for the time being on the List of Aid Recipients (Part 1: Aid to Developing Countries and Territories) produced by the Development Aid Committee of the Organisation for Economic Co-operation and Development.

(3) The Minister shall—

(*a*) maintain a list of the bodies and institutions designated for the purposes of this section, and

(*b*) from time to time as the Minister sees fit cause such list to be published in Iris Oifigiúil.

(4) Where the Minister is satisfied that a body or institution ceases to comply with *subsection (2)*, the Minister shall, with the consent of the Minister for Finance—

(*a*) withdraw the designation previously granted and such withdrawal shall apply from the beginning of the year of assessment in which notice in accordance with *paragraph (b)* is given, and

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(*b*) cause notice of such withdrawal to be published in *Iris Oifigiúil* within one month of such withdrawal.

(5) For the purposes of this section, a donation to a designated charity shall be a qualifying donation if—

(*a*) it is made by an individual (in this section referred to as ''the donor''),

(*b*) it satisfies the requirements of *subsection (6)*, and

(*c*) the donor—

(i) has given an appropriate certificate in relation to the donation to the designated charity, and

(ii) has paid the tax referred to in such appropriate certificate and is not entitled to claim a repayment of that tax or any part of that tax.

(6) A donation shall satisfy the requirements of this subsection if—

(*a*) it takes the form of the payment of a sum or sums of money,

(*b*) it is not subject to a condition as to repayment,

(*c*) neither the donor nor any person connected with the donor receives a benefit in consequence of making it,

(*d*) it is not conditional on or associated with, or part of an arrangement involving, the acquisition of property by the designated charity, otherwise than by means of gift, from the donor or a person connected with the donor,

(*e*) the sum or the aggregate of the sums paid in the relevant year of assessment to the designated charity is not less than £200,

(*f*) the sum or the aggregate of the sums paid does not, when aggregated with any other qualifying donation or qualifying donations made by the donor in the relevant year of assessment, exceed £750, and

(*g*) the donor is resident in the State for the relevant year of assessment.

(7) Where a donation is a qualifying donation, the Tax Acts shall apply in relation to the designated charity as if—

(*a*) the grossed up amount of the donation were an annual payment which was the income of the designated charity received by it under deduction of tax at the standard rate for the relevant year of assessment, and

(*b*) the provisions of those Acts which apply in relation to a claim to repayment of tax applied in relation to any claim to repayment of such tax by a designated charity;

but, if the total amount of the tax referred to in *paragraph (i)(II)* of the definition of ''appropriate certificate'' is not paid, the amount of

any repayment which would otherwise be made to a designated charity in accordance with this section shall not exceed the amount of tax actually paid by the donor. Pt.36 S.848

MANAGEMENT PROVISIONS

PART 37

Administration

Taxes under care and management of Revenue Commissioners.

[ITA67 s155; CGTA75 s51(1) and Sch4 pars 1(1) and (2); CTA76 s6(5); FA96 s132(1) and Sch5 PtI par10(1)]

849.—(1) In this section, ''tax'' means income tax, corporation tax and capital gains tax.

(2) All duties of tax shall be under the care and management of the Revenue Commissioners.

(3) The Revenue Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for tax in the like and in as full and ample a manner as they are authorised to do in relation to any other duties under their care and management and, unless the Minister for Finance otherwise directs, shall appoint such officers and other persons for collecting, receiving, managing and accounting for any duties of tax as are not required to be appointed by some other authority.

(4) All such appointments shall continue in force, notwithstanding the death, or the ceasing to hold office, of any Revenue Commissioner, and the holders shall have power to execute the duties of their respective offices and to enforce in the execution of those offices all laws and regulations relating to tax in every part of the State.

(5) The Revenue Commissioners may suspend, reduce, discharge or restore, as they see fit, any such officer or person.

(6) Any act or thing required or permitted by this or any other statute to be done by the Revenue Commissioners in relation to tax may be done by any one Revenue Commissioner.

Appeal Commissioners.

[ITA67 s156; F(MP)A68 s1(1), s3(2) and Sch PtI]

850.—(1) The Minister for Finance shall appoint persons to be Appeal Commissioners for the purposes of the Income Tax Acts (in the Tax Acts and the Capital Gains Tax Acts referred to as ''Appeal Commissioners'') and the persons so appointed shall, by virtue of their appointment and without other qualification, have authority to execute such powers and to perform such duties as are assigned to them by the Income Tax Acts.

(2) Appeal Commissioners shall be allowed such sums in respect of salary and incidental expenses as the Minister for Finance directs.

(3) The Minister for Finance shall cause an account of all appointments of Appeal Commissioners and their salaries to be laid before each House of the Oireachtas within 20 days of their appointment or, in the case of a House not then sitting, within 20 days after the next sitting of that House.

(4) Anything required to be done under the Income Tax Acts by the Appeal Commissioners or any other Commissioners may, except where otherwise expressly provided by those Acts, be done by any 2 or more Commissioners.

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Collector-General.

[ITA67 s162; FA74 s86 and Sch2 PtI; CGTA75 s51(1) and Sch4 par1(3); CTA76 s145(1); FA87 s52; FA97 s157]

851.—(1) There shall be a Collector-General, who shall be appointed by the Revenue Commissioners from among their officers and who shall hold such office at their will and pleasure.

(2) The Collector-General shall collect and levy the tax from time to time charged in all assessments to income tax, corporation tax and capital gains tax of which particulars have been transmitted to him or her under *section 928*.

(3) (*a*) The Revenue Commissioners may nominate persons to exercise on behalf of the Collector-General any or all of the powers and functions conferred on the Collector-General by the Tax Acts and the Capital Gains Tax Acts.

(*b*) Those powers and functions, as well as being exercisable by the Collector-General, shall also be exercisable on his or her behalf by persons nominated under this subsection.

(*c*) A person shall not be nominated under this subsection unless he or she is an officer or employee of the Revenue Commissioners.

(4) If and so long as the office of Collector-General is vacant or the holder of that office is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in that behalf by the Revenue Commissioners from among their officers shall act as the Collector-General, and any reference in this or any other Act to the Collector-General shall be construed as including, where appropriate, a reference to a person nominated under this subsection.

(5) The Revenue Commissioners may revoke a nomination under this section.

Inspectors of taxes.

[ITA67 s161; FA86 s116]

852.—(1) The Revenue Commissioners may appoint inspectors of taxes, and all such inspectors and all other officers or persons employed in the execution of the Income Tax Acts shall observe and follow the orders, instructions and directions of the Revenue Commissioners.

(2) The Revenue Commissioners may revoke an appointment made under this section.

(3) Inspectors of taxes appointed by the Minister for Finance before the 27th day of May, 1986, shall be deemed to have been appointed by the Revenue Commissioners.

Governor and directors of Bank of Ireland.

[ITA67 s157; FA69 s12; FA76 s81(1) and Sch5 PtI]

853.—For the purpose of assessing and charging income tax in the cases mentioned in this section, the Governor and directors of the Bank of Ireland—

(*a*) shall be Commissioners,

(*b*) shall have all the necessary powers for that purpose, and

(*c*) shall make assessments under and subject to the Income Tax Acts in respect of—

(i) interest, annuities, dividends and shares of annuities, and the profits attached to the same, payable to the

Bank of Ireland out of the public revenue of the State, Pt.37 S.853

(ii) interest, annuities, dividends and shares of annuities entrusted to the Bank of Ireland for payment,

(iii) all other interest, annuities and dividends, and

(iv) all other profits chargeable with tax arising within any office or department under the management or control of the Bank of Ireland.

Appointment of persons for purposes of assessment of certain public offices.

854.—Where the Minister for Finance determines that, by reason of special circumstances existing in any particular public office, it is not expedient that the powers and duties of assessing and charging income tax in relation to that office or any one or more of such powers and duties should be exercised and performed in relation to that office by the inspector or other officer appointed in that behalf, the Revenue Commissioners shall appoint such officers or persons as may be approved of by the Minister for Finance to exercise such powers and duties in relation to that office.

[ITA67 s158]

Declaration to be made by Commissioners.

855.—The respective Commissioners for executing the Income Tax Acts in relation to offices and employments of profit and pensions and stipends shall, as soon as practicable after their appointment, meet and make and subscribe the declaration contained in *Part 2* of *Schedule 27* and may respectively elect a clerk and assessors and, if the tax cannot be deducted at the department or office of the Commissioners or at the office for which they act, they may, from among the officers in their respective departments, appoint separate assessors and collectors for each such department.

[ITA67 s159]

Disqualification of Commissioners in cases of personal interest.

856.—(1) Every Commissioner acting in the execution of the Income Tax Acts shall be chargeable with tax in the same manner as any other person, but shall take no part in the proceedings, and shall not be present, when any assessment, statement or schedule is under consideration, or any controversy or appeal is being determined, with reference to any case in which he or she is interested, either in his or her own right or in the right of any other person as his or her agent, except during the hearing of an appeal for the purpose of being examined orally by the Commissioners, and he or she shall withdraw during the consideration and determination of the controversy or appeal.

[ITA67 s160; CTA76 s146(2)]

(2) A Commissioner who, in any case referred to in *subsection (1)*, takes any part in the determination of any such controversy or appeal, or fails to withdraw, shall incur a penalty of £50.

(3) For the purposes of corporation tax, where an Appeal Commissioner is interested in his or her own right or in the right of any other person in any matter under appeal, he or she shall not take part in, or be present at, the hearing or determination of the appeal.

Declarations on taking office.

857.—(1) Every person appointed to one of the offices named in *Part 1* of *Schedule 27* shall, before he or she commences to act in the execution of the Income Tax Acts in so far as those Acts relate to tax under Schedule D, make and subscribe the declaration contained in that Part in respect of his or her office.

[ITA67 s163; F(MP)A68 s3(4) and Sch PtIII; CTA76 s147(5)]

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(2) The declaration may be made before a Peace Commissioner.

(3) A person who acts in the execution of his or her office in relation to tax under Schedule D (otherwise than in respect of any such declaration made before him or her) before he or she has made the prescribed declaration shall forfeit the sum of £100.

(4) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of corporation tax shall be subject to the same obligations as to secrecy with respect to corporation tax as those persons are subject to with respect to income tax, and any declaration made by any such person as to secrecy with respect to income tax shall be deemed to extend also to secrecy with respect to corporation tax.

Evidence of authorisation.

[FA97 s159]

858.—(1) In this section, except where the context otherwise requires—

''the Acts'' means—

(*a*) (i) the Customs Acts,

(ii) the statutes relating to the duties of excise and to the management of those duties,

(iii) the Tax Acts,

(iv) the Capital Gains Tax Acts,

(v) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(vi) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

(vii) the statutes relating to stamp duty and to the management of that duty,

and any instruments made thereunder or under any other enactment and relating to tax, and

(*b*) the European Communities (Intrastat) Regulations, 1993 (S.I. No. 136 of 1993);

''authorised officer'' means an officer of the Revenue Commissioners who is authorised, nominated or appointed under any provision of the Acts to exercise or perform any functions under any of the specified provisions, and ''authorised'' and ''authorisation'' shall be construed accordingly;

''functions'' includes powers and duties;

''identity card'', in relation to an authorised officer, means a card which is issued to the officer by the Revenue Commissioners and which contains—

(*a*) a statement to the effect that the officer—

(i) is an officer of the Revenue Commissioners, and

(ii) is an authorised officer for the purposes of the specified provisions,

(*b*) a photograph and signature of the officer,

(*c*) a hologram showing the logo of the Office of the Revenue Commissioners,

(*d*) the facsimile signature of a Revenue Commissioner, and

(*e*) particulars of the specified provisions under which the officer is authorised;

''specified provisions'', in relation to an authorised officer, means either or both the provisions of the Acts under which the authorised officer—

(*a*) is authorised and which are specified on his or her identity card, and

(*b*) exercises or performs functions under the Customs Acts or any statutes relating to the duties of excise and to the management of those duties;

''tax'' means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) Where, in the exercise or performance of any functions under any of the specified provisions in relation to him or her, an authorised officer is requested to produce or show his or her authorisation for the purposes of that provision, the production by the authorised officer of his or her identity card—

(*a*) shall be taken as evidence of authorisation under that provision, and

(*b*) shall satisfy any obligation under that provision which requires the authorised officer to produce such authorisation on request.

(3) This section shall come into operation on such day as the Minister for Finance may appoint by order.

Anonymity of authorised officers in relation to certain matters.

[FA83 s19A; DCITPA96 s12; CABA96 s23]

859.—(1) In this section—

''authorised officer'' means an officer of the Revenue Commissioners nominated by them to be a member of the staff of the body;

''the body'' has the meaning assigned to it by *section 58*;

''proceedings'' includes any hearing before the Appeal Commissioners (within the meaning of the Revenue Acts);

''the Revenue Acts'' means—

(*a*) the Customs Acts,

(*b*) the statutes relating to the duties of excise and to the management of those duties,

(*c*) the Tax Acts,

(*d*) the Capital Gains Tax Acts,

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(*e*) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(*f*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

(*g*) the statutes relating to stamp duty and the management of that duty,

(*h*) Chapter IV of Part II of the Finance Act, 1992, and

(*i*) Part VI of the Finance Act, 1983,

and any instruments made thereunder or under any other enactment and relating to tax;

''tax'' means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) Notwithstanding any requirement made by or under any enactment or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of an authorised officer shall not be revealed.

(3) In particular and without prejudice to the generality of *subsection (2)*:

(*a*) where, for the purposes of exercising or performing his or her powers or duties under the Revenue Acts in pursuance of the functions of the body, an authorised officer may apart from this section be required to produce or show any written authority or warrant of appointment under those Acts or otherwise to identify himself or herself, the authorised officer shall—

(i) not be required to produce or show any such authority or warrant of appointment or to so identify himself or herself, for the purposes of exercising or performing his or her powers or duties under those Acts, and

(ii) be accompanied by a member of the Garda Síochána who shall, on request by a person affected, identify himself or herself as a member of the Garda Síochána and shall state that he or she is accompanied by an authorised officer;

(*b*) where, in pursuance of the functions of the body, an authorised officer exercises or performs in writing any of his or her powers or duties under the Revenue Acts or any provision of any other enactment, whenever passed, which relates to Revenue, such exercise or performance of his or her powers or duties shall be done in the name of the body and not in the name of the individual authorised officer involved, notwithstanding any provision to the contrary in any of those enactments;

(*c*) in any proceedings arising out of the exercise or performance, in pursuance of the functions of the body, of powers or duties by an authorised officer, any documents relating to such proceedings shall not reveal the identity of any authorised officer, notwithstanding any requirements to

the contrary in any provision, and in any proceedings the identity of such officer other than as an authorised officer shall not be revealed other than to the judge or the Appeal Commissioner, as the case may be, hearing the case;

(*d*) where, in pursuance of the functions of the body, an authorised officer is required, in any proceedings, to give evidence and the judge or the Appeal Commissioner, as the case may be, is satisfied that there are reasonable grounds in the public interest to direct that evidence to be given by such authorised officer should be given in the hearing and not in the sight of any person, he or she may so direct.

Administration of oaths.

860.—(1) A Peace Commissioner may administer an oath to be taken before a Commissioner by any officer or person in any matter relating to the execution of the Tax Acts.

[ITA67 s164; F(MP)A68 s3(1) and (3) and Sch PtI; CTA76 s147(1) and (2)]

(2) An Appeal Commissioner may administer an oath to be taken before the Appeal Commissioners under the Tax Acts by any officer or person in any matter relating to the execution of the Tax Acts.

Documents to be in accordance with form prescribed by Revenue Commissioners.

861.—(1) Every assessment, charge, bond, warrant, notice of assessment or of demand, or other document required to be used in assessing, charging, collecting and levying income tax, corporation tax or capital gains tax shall be in accordance with the forms prescribed from time to time in that behalf by the Revenue Commissioners, and a document in the form prescribed and supplied or approved by them shall be valid and effectual.

[ITA67 s165; CGTA75 s51(1) and Sch4 par2; CTA76 s143(12)(b) and (c) and s147(1) and (2)]

(2) (*a*) In this subsection, ''return'' includes any statement, declaration or list.

(*b*) Any return under the Corporation Tax Acts shall be in such form as the Revenue Commissioners prescribe.

Exercise of powers, etc. of Minister for Finance under Tax Acts.

862.—Anything required under the Tax Acts to be done by the Minister for Finance may be signified under the hand of the Secretary General, a Deputy Secretary or an Assistant Secretary of the Department of Finance.

[ITA67 s166(2); CTA76 s147(1) and (2)]

Loss, destruction or damage of assessments and other documents.

863.—(1) Subject to *subsection (2)*, where any assessment to income tax or capital gains tax for any year, or any assessment to corporation tax for any accounting period or any return or other document relating to income tax, corporation tax or capital gains tax has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Revenue Commissioners, the Collector-General, inspectors and other officers respectively having powers in relation to income tax, corporation tax or capital gains tax may, notwithstanding anything to the contrary in any enactment, do all such acts and things as they might have done, and all acts and things done under or in accordance with this section shall be as valid and effectual for all purposes as they would have been if the assessment had not been made, or the return or other document had not been made or furnished, or required to be made or furnished.

[ITA67 s188(1); CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

(2) Where any person who is charged with income tax, corporation tax or capital gains tax in consequence or by virtue of any act or

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thing done under or in accordance with this section proves to the satisfaction of the Revenue Commissioners that that person has already paid any income tax or capital gains tax for the same year, or corporation tax for the same accounting period, in respect of the subject matter and on the account in respect of and on which that person is so charged, relief shall be given to the extent to which the liability of that person has been discharged by the payments so made either by abatement from the charge or by repayment, as the case may require.

Making of claims, etc.

[ITA67 s432(1) (part of); CGTA75 s51(1) and Sch4 par2; CTA76 s4 and s146(1); FA84 s6(a)]

864.—(1) Notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts—

(*a*) all claims of exemption or for any allowance or deduction under those Acts,

(*b*) all claims for repayment of income tax, corporation tax or capital gains tax under those Acts, and

(*c*) (i) all claims to relief under those Acts where the relief is measured in the provision under which it is given, and

(ii) all matters and questions relating to any relief so measured,

in relation to which a right of appeal from a decision is, otherwise than by *section 949*, not specifically provided,

shall be stated in such manner and form as the Revenue Commissioners may prescribe, and shall be made to and determined by the Revenue Commissioners or such officer of the Revenue Commissioners (including an inspector) as they may authorise in that behalf.

(2) Effect shall be given—

(*a*) to *section 21(2)* and to that section as modified by *sections 24(2)* and *25(3)*, and

(*b*) in so far as the exemptions from income tax conferred by the Corporation Tax Acts call for repayment of tax, to those exemptions,

by means of a claim.

Limit of time for repayment claims.

[ITA67 s498; F(MP)A68 s4(5)(a); CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

865.—Except where otherwise expressly provided by any provision of the Tax Acts or the Capital Gains Tax Act, no claim for repayment of income tax, corporation tax or capital gains tax under those Acts shall be allowed unless it is made within 10 years after the end of the year of assessment or, as the case may be, accounting period to which it relates.

Rules as to delivery of statements.

[ITA67 s533; FA69 s65(1) and Sch5 PtI]

866.—Any person who, on that person's own behalf or on behalf of another person or body of persons, delivers a statement of the amount of the profits on which any income tax is chargeable shall observe the rules and directions contained in *Schedule 28* in so far as those rules and directions are respectively applicable.

867.—It shall be lawful for the Revenue Commissioners from time to time to make such amendments of the forms of declarations, lists and statements contained in *Schedules 27* and *28* as appear to them to be necessary to give effect to the Income Tax Acts.

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Amendment of statutory forms.

[ITA67 s189]

868.—(1) Warrants issued under the authority of the Tax Acts shall be executed by the respective persons to whom they are directed.

Execution of warrants.

[ITA67 s536; F(MP)A68 s3(4) and Sch PtIII, s3(5) and Sch PtIV; CTA76 s147(1) and (2)]

(2) Members of the Garda Síochána shall aid in the execution of the Tax Acts.

869.—(1) (*a*) In this subsection, except where in *paragraph (d)* the context otherwise requires, ''company'' means any body corporate.

Delivery, service and evidence of notices and forms.

[ITA67 s542(2) and (4) to (7); F(MP)A68 s3(2) and Sch PtI; CGTA75 s51(1) and Sch4 par2; FA75 s25; CTA76 s147(1) and (2)]

(*b*) Any notice, form or other document which under the Tax Acts or the Capital Gains Tax Acts is to be given, served, sent or delivered to or on a person by the Revenue Commissioners or by an inspector or other officer of the Revenue Commissioners may be either delivered to the person or left—

(i) in a case where the person is a company, at the company's registered office or place of business, or

(ii) in any other case, at the person's usual or last known place of abode or place of business or, if the person is an individual, at his or her place of employment.

(*c*) Any notice, form or other document referred to in *paragraph (b)* may be served by post addressed—

(i) in a case where the person is a company, to the company at either of the places specified in *paragraph (b)(i)*, or

(ii) in any other case, to the person at any of the places specified in *paragraph (b)(ii)*.

(*d*) Without prejudice to *paragraphs (b)* and *(c)*, section 379 of the Companies Act, 1963, shall apply in relation to the service on a company of any notice, form or other document referred to in this subsection as it applies in relation to the service of documents under that section on a company within the meaning of that Act.

(2) Any notice which under the Tax Acts or the Capital Gains Tax Acts is authorised or required to be given by the Revenue Commissioners may be signed and given by any officer of the Revenue Commissioners authorised by them for the purpose of giving notices of the class to which the notice belongs and, where so signed and given, shall be as valid and effectual as if signed under the hands of the Revenue Commissioners and given by them.

(3) Prima facie evidence of any notice given under the Tax Acts or the Capital Gains Tax Acts by the Revenue Commissioners or an inspector or other officer of the Revenue Commissioners may be

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given in any proceedings by the production of a document purporting to be a copy of the notice, and it shall not be necessary to prove the official positions or position of the persons or person by whom the notice purports to be given or, where it is signed, the signatures or signature or that the persons or person signing and giving it were or was authorised to do so.

(4) Notices to be given or delivered to, or served on, the Appeal Commissioners shall be valid and effectual if given or delivered to or served on their Clerk.

(5) This section shall apply notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts.

Effect of want of form, error, etc. on assessments, charges, warrants and other proceedings.

[ITA67 s537; F(MP)A68 s3(2) and Sch PtI; CGTA75 s51(1) and Sch4 par2; CTA76 s147(1) and (2)]

870.—(1) An assessment, charge, warrant or other proceeding which purports to be made in accordance with the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of those Acts, and if the person or property charged or intended to be charged or affected thereby is designated therein according to common intent and understanding.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts but subject to *subsection (3)*, an assessment or a charge made on an assessment shall not be impeached or affected—

(*a*) by reason of a mistake in the assessment or the charge made on the assessment as to—

(i) the name or surname of a person liable,

(ii) the description of any profits or property, or

(iii) the amount of the tax charged;

(*b*) by reason of any variance between the notice and the certificate of charge or assessment.

(3) In cases of charge, the notice of charge shall be duly served on the person intended to be charged, and the notice and certificate shall respectively contain, in substance and effect, the particulars on which the charge is made, and every such charge shall be heard and determined on its merits by the Appeal Commissioners.

Power to combine certain returns and assessments.

[CGTA75 s51(1) and Sch4 par16]

871.—Any return, assessment or other document relating to chargeable gains or capital gains tax may be combined with one relating to income or income tax.

Use of information relating to other taxes and duties.

[FA28 s34(2); FA96 s130]

872.—(1) Any information acquired, whether before or after the passing of this Act, in connection with any tax or duty under the care and management of the Revenue Commissioners may be used by them for any purpose connected with any other tax or duty under their care and management.

(2) The Revenue Commissioners or any of their officers may, for any purpose in connection with the assessment and collection of income tax, corporation tax or capital gains tax, make use of or produce in evidence any returns, correspondence, schedules,

accounts, statements or other documents or information to which the Revenue Commissioners or any of their officers have or has had or may have lawful access for the purposes of the Acts relating to any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

873.—In any proceedings under or arising out of the Tax Acts before any court or person empowered to take evidence, prima facie proof of the fact that any person was a Commissioner or officer may be given by proving that, at the time when any matter in controversy in any such proceedings arose, that person was reputed to be or had acted as a Commissioner or officer.

Proof that person is a Commissioner or officer.

[ITA67 s541; CTA76 s147(1) and(2)]

874.—(1) A Commissioner, sheriff, county registrar, clerk, inspector, assessor or Collector-General who acts, or is employed, in the execution of the Tax Acts or the Capital Gains Tax Acts shall not be liable to any penalty in respect of such execution other than as provided by those Acts.

Limitation of penalties on officers employed in execution of Tax Acts and Capital Gains Tax Acts.

[ITA67 s519; CTA76 s147(1) and (2); CGTA75 s51(1) and Sch4 par3(2)]

(2) Where any civil or criminal proceeding against any officer or person employed in relation to any duty of income tax, corporation tax or capital gains tax on account of the seizure or detention of any goods is brought to trial, and a verdict or judgment is given against the defendant, then, if the court or judge certifies that there was probable cause for the seizure, the plaintiff shall not be entitled to any damages besides the goods seized, or the value of those goods, or to any costs, and the defendant shall not be liable to any punishment.

875.—No appraisement or valuation given or made in pursuance and for the purposes of the Tax Acts or the Capital Gains Tax Acts shall be liable to any stamp duty.

Exemption of appraisements and valuations from stamp duty.

[ITA67 s538; CGTA75 s51(2) and Sch4 par2; CTA76 s147(1) and (2)]

PART 38

Returns of Income and Gains, Other Obligations and Returns, and Revenue Powers

CHAPTER 1

Income tax: returns of income

876.—Every person who is chargeable to income tax for any year of assessment and who in relation to that year has not been given a notice under *section 877* or *879* and has not made a return of such person's total income shall, not later than one year after the end of the year of assessment, give notice to the inspector of taxes that such person is so chargeable.

Notice of liability to income tax.

[F(MP)A68 s5(1)]

877.—(1) Every person chargeable under the Income Tax Acts, when required to do so by a notice given to such person by an inspector, shall, within the time limited by such notice, prepare and deliver to the inspector a statement in writing as required by the Income Tax Acts, signed by such person, containing the amount of the profits or gains arising to such person, from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts.

Returns by persons chargeable.

[ITA67 s169; F(MP)A68 s6(2) and (3); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par4; FA76 s11(5)]

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(2) Where a person's income of which particulars are required to be included in a statement under this section comprises a distribution chargeable under Schedule F, there shall be shown separately in the statement the amount or value of the distribution and the amount of any tax credit under *section 136* to which the person is entitled in respect of that distribution.

(3) There shall be added to the statement referred to in *subsection (1)* a declaration that the amounts contained in that statement are estimated in respect of all the sources of income mentioned in the Income Tax Acts, describing those sources, after deducting only such sums as are allowed.

(4) Every such statement shall be made exclusive of any interest of money or other annual payment arising out of the property of any other person charged in respect of that interest of money or other annual payment.

(5) (*a*) Every person to whom a notice has been given by an inspector requiring such person to deliver a statement of any profits, gains or income in respect of which such person is chargeable under Schedule D or E shall deliver a statement in the form required by the notice, whether or not such person is so chargeable.

(*b*) The penalty imposed on any person proceeded against for not complying with this subsection who proves that such person was not chargeable to income tax shall not exceed £5 for any one offence.

Persons acting for incapacitated persons and non-residents.

[ITA67 s170; F(MP)A68 s6(4)]

878.—(1) Every person (in this subsection referred to as ''the first-mentioned person'') acting in any character on behalf of any incapacitated person or person not resident in the State who, by reason of such incapacity or non-residence in the State, may not be personally charged under the Income Tax Acts shall, whenever required to do so by a notice given to the first-mentioned person by an inspector, within the time permitted by such notice and in any district in which the first-mentioned person may be chargeable on the first-mentioned person's own account, deliver a statement described in *section 877* of the profits or gains in respect of which income tax is to be charged on the first-mentioned person on account of that other person, together with the prescribed declaration.

(2) Where 2 or more such persons are liable to be charged for the same person—

(*a*) one statement only shall be required to be delivered which may be made by them jointly or by any one or more of them, and

(*b*) notice in writing may be given by any such persons to the inspector for each district in which they are called on for a statement stating in which district or districts they are respectively chargeable on their own account, and in which of those districts they desire to be charged on behalf of the person for whom they act, and they shall, if any one such person is liable to be charged on such person's own account in that district, be charged in that district accordingly by one assessment.

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Returns of income.

[ITA67 s172(1), (2), (4) and (6); FA74 s86 and Sch2 PtI; FA90 s23(2)]

879.—(1) In this section, ''prescribed'' means prescribed by the Revenue Commissioners and, in prescribing forms for the purposes of this section, the Revenue Commissioners shall have regard to the desirability of securing in so far as may be possible that no individual shall be required to make more than one return annually of the sources of the individual's income and the amounts derived from those sources.

(2) Every individual, when required to do so by a notice given to him or her in relation to any year of assessment by an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return in the prescribed form of—

(*a*) all the sources of his or her income for the year of assessment in relation to which the notice is given;

(*b*) the amount of income from each source for the year of assessment computed in accordance with *subsection (3)*;

(*c*) such further particulars for the purposes of income tax for the year of assessment as may be required by the notice or indicated by the prescribed form.

(3) The amount of income from any source to be included in a return under this section shall be computed in accordance with the Income Tax Acts; but, where under *section 65* the profits or gains of a year ending on a date within the year of assessment are to be taken to be the profits or gains of that year of assessment, the computation shall be made by reference to that year ending on a date within that year of assessment.

(4) Where a person delivers to any inspector a return in a prescribed form, the person shall be deemed to have been required by a notice under this section to prepare and deliver that return.

Partnership returns.

[ITA67 s69(3) and s70(1) to (3A) and (5); FA74 s86 and Sch2 PtI; FA79 s30; FA90 s23(1)]

880.—(1) In this section—

''precedent partner'' has the same meaning as in *Part 43*;

''prescribed'' means prescribed by the Revenue Commissioners.

(2) The precedent partner of any partnership, when required to do so by a notice given to that partner in relation to any year of assessment by an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return in the prescribed form of—

(*a*) all the sources of income of the partnership for the year of assessment in relation to which the notice is given;

(*b*) the amount of income from each source for the year of assessment computed in accordance with *subsection (3)*;

(*c*) such further particulars for the purposes of income tax for the year of assessment as may be required by the notice or indicated by the prescribed form.

(3) The amount of income from any source to be included in a return under this section shall be computed in accordance with the Income Tax Acts; but where, in the case of a trade or profession, an account has been made up to a date within the year of assessment or more accounts than one have been made up to dates within that

year, the computation shall be made by reference to the period, or to all the periods where there is more than one period, for which accounts have been so made up.

(4) Where a person delivers to any inspector a return in a prescribed form, the person shall be deemed to have been required by a notice under this section to prepare and deliver that return.

(5) The precedent partner of any partnership, when required to do so by a notice given to that partner by an inspector, shall within the time limited by such notice prepare and deliver to the inspector a statement in writing signed by that partner stating the amount of the profits or gains arising to the partnership from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts.

(6) There shall be added to the statement referred to in *subsection (5)* a declaration that the amounts contained in that statement are estimated in respect of all the sources of income mentioned in the Income Tax Acts, describing those sources, after deducting only such sums as are allowed.

Returns by married persons.

[ITA67 s195B(3) and (6); FA76 s11(1) to (3); FA80 s19 and Sch1 PtIII par6; FA93 s10(1)]

881.—(1) Where an individual is required by a notice given under *section 877* to deliver a statement in writing of the total income in respect of which the individual is chargeable to income tax and that income is or includes income of his or her spouse, the individual may, within 21 days from the date of the receipt of the notice, notify the inspector by whom the notice was given that the income in respect of which the individual is chargeable to income tax is or includes income of his or her spouse.

(2) Where an inspector receives a notification under *subsection (1)* or is of the opinion that the spouse of the individual concerned is in receipt of income, the inspector may by notice given to the individual's spouse require him or her to prepare and deliver to the inspector, within the time limited by the notice and in the form required by the notice, a statement in writing signed by him or her, setting out the amount of income arising to him or her from each and every source chargeable according to the respective schedules, estimated for the period specified in the notice and according to the Income Tax Acts, whether or not the individual's spouse or the individual concerned is the person chargeable to income tax in respect of that income.

(3) The delivery of a statement under *subsection (2)* shall not affect *Chapter 1* of *Part 44*.

CHAPTER 2

Corporation tax: returns of profits

Particulars to be supplied by new companies.

[CTA76 s141(1), (1A), (1B) and (3) and s154; FA95 s58]

882.—(1) In this section, ''secretary'' includes persons mentioned in *section 1044(2)* and, in the case of a company not resident in the State, the agent, manager, factor or other representative of the company.

(2) Every company which commences to carry on a trade, profession or business shall, within 30 days from the date of such commencement, deliver to the Revenue Commissioners a statement in writing containing the following particulars—

(*a*) the name of the company,

(*b*) the address of its registered office in the State or, in the case of a company not resident in the State, the address of its principal place of business in the State,

(*c*) the name of the secretary or, in the case of a company not resident in the State, the name and address of the agent, manager, factor or other representative of the company,

(*d*) the date of commencement of the trade, profession or business or, in the case of a company not resident in the State, the date of commencement of its trade or profession in the State,

(*e*) the nature of the trade, profession or business, and

(*f*) the date to which the first accounts relating to such trade, profession or business will be made up;

but this subsection shall not apply to a company which is neither resident nor incorporated in the State unless it commences to carry on a trade, profession or business in the State.

(3) Subject to *subsection (4)*, every company which is incorporated in the State and is neither resident in the State nor carrying on a trade, profession or business in the State shall, in every case within 30 days of—

(*a*) the date on which it commences to carry on a trade, profession or business, wherever carried on,

(*b*) any time at which there is a material change in information previously delivered by the company under this subsection, and

(*c*) the giving of a notice to the company by an inspector requiring a statement under this subsection,

deliver to the Revenue Commissioners a statement in writing containing particulars of—

(i) the name of the company,

(ii) the address of its registered office in the State and the address of its principal place of business,

(iii) the nature of the trade, profession or business,

(iv) the name and address of the secretary of the company,

(v) (I) where the company is controlled by a company the shares in which are listed in the official list of a recognised stock exchange and have been the subject of dealings on such an exchange in the period of 12 months ending at the time at which the statement is delivered, the name of that company and the address of its registered office, and

(II) in any other case, the name and address of any individual or individuals who have control of the company,

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(vi) the territory in which the central management and control of the company is normally carried out, and

(vii) such other information as the Revenue Commissioners consider necessary for the purposes of determining the territory in which the company is resident for the purposes of tax.

(4) *Subsection (3)* shall not apply to a company (in this subsection referred to as ''the first-mentioned company'') if, at the time at which a statement under that subsection would apart from this subsection have to be delivered, there is a company which is a 90 per cent subsidiary of the first-mentioned company carrying on a trade or profession in the State.

(5) For the purposes of this section—

(*a*) *sections 412* to *418* shall apply for the purposes of this paragraph as they would apply for the purposes of *Chapter 5* of *Part 12* if *section 411(1)(c)* were deleted, and

(*b*) control shall be construed in accordance with *section 432*.

Notice of liability to corporation tax.

[CTA76 s142(1)]

883.—Every company which is chargeable to corporation tax for any accounting period and which has not made a return of its profits for that accounting period shall, not later than one year after the end of that accounting period, give notice to the inspector that it is so chargeable.

Returns of profits.

[CTA76 s143(1) to (6), (7)(a), (b) and (d) and (12)(c); FA81 s16; FA83 s36; FA90 s54; FA92 s247]

884.—(1) In this section, ''return'' includes any statement, declaration or list.

(2) A company may be required by a notice served on it by an inspector or other officer of the Revenue Commissioners to deliver to the officer within the time limited by the notice a return of—

(*a*) the profits of the company computed in accordance with the Corporation Tax Acts—

(i) specifying the income taken into account in computing those profits, with the amount from each source,

(ii) giving particulars of all disposals giving rise to chargeable gains or allowable losses under the Capital Gains Tax Acts and the Corporation Tax Acts and particulars of those chargeable gains or allowable losses, and

(iii) giving particulars of all charges on income to be deducted against those profits for the purpose of the assessment to corporation tax, other than those included in *paragraph (d)*,

(*b*) the distributions received by the company from companies resident in the State and the tax credits to which the company is entitled in respect of those distributions,

(*c*) all amounts of tax credits recoverable from the company under *sections 157(5)* and *158(4)*,

(*d*) payments made from which income tax is deductible and to which *subsections (3)* to *(5)* of *section 238* apply, and

(*e*) all amounts which under *section 438* are deemed to be annual payments.

(3) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the disposal of an asset giving rise to a chargeable gain or an allowable loss under the Capital Gains Tax Acts and the Corporation Tax Acts shall for the purposes of this section constitute such a disposal.

(4) A notice under this section may require a return of profits arising in any period during which the company was within the charge to corporation tax, together with particulars of distributions received in that period from companies resident in the State and of tax credits to which the company is entitled in respect of those distributions.

(5) Every return under this section shall include a declaration to the effect that the return is correct and complete.

(6) A return under this section which includes profits which are payments on which the company has borne income tax by deduction shall specify the amount of income tax so borne.

(7) A notice under this section may require the inclusion in the return of particulars of management expenses, capital allowances and balancing charges which have been taken into account in determining the profits included in the return.

(8) *Subsections (3)*, *(4)* and *(5)(b)* of *section 913* shall apply in relation to a notice under this section as they apply in relation to a notice under any provision of the Income Tax Acts applied in relation to capital gains tax by *section 913*.

(9) (*a*) In this subsection, ''authorised officer'' means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this subsection.

(*b*) Where a company which has been duly required to deliver a return under this section fails to deliver the return, or where the inspector is not satisfied with the return delivered by any such company, an authorised officer may serve on that company a notice or notices in writing requiring the company to do any of the following—

(i) to deliver to the inspector or to the authorised officer copies of such accounts (including balance sheets) of the company as may be specified or described in the notice, within such period as may be specified in the notice, including, where the accounts have been audited, a copy of the auditor's certificate;

(ii) to make available for inspection by an inspector or by an authorised officer within such time as may be specified in the notice all such books, accounts and documents in the possession or power of the company as may be specified or described in the notice, being books, accounts and documents which contain information as to profits, assets or liabilities of the company.

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(*c*) The inspector or authorised officer may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this subsection.

CHAPTER 3

Other obligations and returns

Obligation to show tax reference number on receipts.

[FA83 s22(1) and (2)]

885.—(1) In this section—

''business'' means—

(*a*) a profession, or

(*b*) a trade consisting solely of the supply (within the meaning of the Value-Added Tax Acts, 1972 to 1997) of a service and includes, in the case of a trade part of which consists of the supply of a service, that part, and also includes, in the case of a trade the whole or part of which consists of the supply of a service which incorporates the supply of goods in the course of the supply of that service, that trade or that part, as the case may be;

''specified person'', in relation to a business, means—

(*a*) where the business is carried on by an individual, that individual, and

(*b*) where the business is carried on by a partnership, the precedent partner;

''tax reference number'', in relation to a specified person, means each of the following—

(*a*) the Revenue and Social Insurance (RSI) Number stated on any certificate of tax-free allowances issued to that person by an inspector, not being a certificate issued to an employer in respect of an employee of that employer,

(*b*) the reference number stated on any return of income form or notice of assessment issued to that person by an inspector, and

(*c*) the registration number of that person for the purposes of value-added tax.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, the specified person in relation to a business shall ensure that the specified person's tax reference number or, if the specified person has more than one tax reference number, one of those tax reference numbers or, if the specified person has no tax reference number, the specified person's full names and address is or are stated on any document (being an invoice, credit note, debit note, receipt, account, statement of account, voucher or estimate relating to an amount of £5 or more) issued in the course of that business.

Obligation to keep certain records.

[FA68 s6(1) to (5); CTA76 s147(1) and (2); FA92 s231]

886.—(1) In this section—

''linking documents'' means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

''records'' includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to—

(*a*) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,

(*b*) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,

(*c*) the assets and liabilities of the trade, profession or other activity referred to in *paragraph (a)* or *(b)*, and

(*d*) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.

(2) (*a*) Every person who—

(i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,

(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(*b*) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(*c*) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.

(*d*) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of *section 1007*) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept—

(*a*) in written form in an official language of the State, or

(*b*) subject to *section 887(2)*, by means of any electronic, photographic or other process.

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(4) (*a*) Subject to *paragraph (b)*, linking documents and records kept in accordance with *subsections (2)* and *(3)* shall be retained by the person required to keep the records—

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

(ii) in the case of a person who fails to comply with *section 951(1)* requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations.

(*b*) *Paragraph (a)* shall not—

(i) require the retention of linking documents and records in respect of which the inspector notifies in writing the person who is required to retain them that retention is not required, or

(ii) apply to the books and papers of a company which have been disposed of in accordance with section 305(1) of the Companies Act, 1963.

(5) Any person who fails to comply with *subsection (2)*, *(3)* or *(4)* in respect of any records or linking documents in relation to a return for any year of assessment or accounting period shall be liable to a penalty of £1,200; but a penalty shall not be imposed under this subsection if it is proved that no person is chargeable to tax in respect of the profits or gains for that year of assessment or accounting period, as the case may be.

Use of electronic data processing.

[FA86 s113(1), (2) and (3); FA93 s99]

887.—(1) In this section—

''the Acts'' means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts,

(*c*) the Value-Added Tax Act, 1972,

(*d*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and

(*e*) Part VI of the Finance Act, 1983,

and any instruments made thereunder;

''records'' means documents which a person is obliged by the Acts to keep, to issue or to produce for inspection, and any other written or printed material.

(2) For the purposes of the Acts and subject to the agreement of the Revenue Commissioners, records may be stored, maintained, transmitted, reproduced or communicated, as the case may be, by

any electronic, photographic or other process approved of by the Revenue Commissioners, and in circumstances where the use of such process has been agreed by the Revenue Commissioners and subject to such conditions as they may impose. PT.38 S.887

(3) Where in accordance with *subsection (2)* records are preserved by electronic, photographic or other process, a statement contained in a document produced by any such process shall, subject to the rules of court, be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.

Returns, etc. by lessors, lessees and agents.

[ITA67, 80(1) and s94; FA69 s33(1) and Sch4 PtI; FA92 s227(a); FA95 s14(1)]

888.—(1) In this section, ''lease'', ''lessee'', ''lessor'', ''premises'' and ''rent'' have the same meanings respectively as in *Chapter 8* of *Part 4*.

(2) For the purpose of obtaining particulars of profits or gains chargeable to tax under Case IV or V of Schedule D by virtue of *Chapter 8* of *Part 4*, the inspector may by notice in writing require—

(*a*) any lessor or former lessor of premises to give, within the time limited by the notice, such information as may be specified in the notice as to the provisions of the lease, the terms subject to which the lease was granted and the payments made to or by that lessor or former lessor, as the case may be, in relation to the premises;

(*b*) any lessee, occupier or former lessee or occupier of premises (including any person having or having had the use of premises) to give such information as may be specified in the notice as to the terms applying to the lease, occupation or use of the premises and, where any of those terms are established by any written instrument, to produce the instrument to the inspector for inspection;

(*c*) any lessee or former lessee of premises to give such information as may be specified in the notice as to any consideration given for the grant to that lessee or former lessee, as the case may be, of the lease;

(*d*) any person who as an agent manages premises or is in receipt of rent or other payments arising from premises to prepare and deliver to the inspector a return containing—

(i) the full address of all such premises,

(ii) the name and address of every person to whom such premises belong,

(iii) a statement of all rents and other such payments arising from such premises, and

(iv) such other particulars relating to all such premises as may be specified in the notice;

(*e*) any Minister of the Government who, or any health board, local authority (within the meaning of section 2(2) of the Local Government Act, 1941) or other board or authority, or other similar body, established by or under statute which, makes any payment either in the nature of or for the purpose of rent or rent subsidy in relation to any

premises to prepare and deliver to the inspector a return containing—

(i) the full address of all such premises,

(ii) the name and address of every person to whom such premises belong,

(iii) a statement of all such payments arising in respect of such premises, and

(iv) such other particulars relating to all such premises as may be specified in the notice.

Returns of fees, commissions, etc. paid by certain persons.

[ITA67 s173(1) to (7) and (9) to (10); FA82 s60; FA92 s227(b) and s248]

889.—(1) In this section—

''tax reference number'', in relation to a person, has the meaning assigned to it by *section 885* in relation to a specified person within the meaning of that section;

references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with rendering of services;

references to payments made include references to the giving of any valuable consideration, and the requirement imposed by *subsection (5)* to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.

(2) Every person carrying on a trade or business shall, if required to do so by notice from an inspector, make and deliver to the inspector a return of all payments of any kind specified in the notice made during the period so specified, being—

(*a*) payments made in the course of the trade or business, or of such part of the trade or business as may be specified in the notice, for services rendered in connection with the trade or business by persons ordinarily resident in the State and not employed in the trade or business,

(*b*) payments for services rendered in connection with the formation, acquisition, development or disposal of the trade or business, or any part of it, by persons ordinarily resident in the State and not employed in the trade or business, or

(*c*) periodical or lump sum payments made to persons ordinarily resident in the State in respect of any copyright.

(3) Every body of persons (which for the purposes of this section shall be deemed to include a Minister of the Government and any body established by or under statute) carrying on any activity which does not constitute a trade or business shall, if required to do so by a notice from an inspector, make and deliver to the inspector a return of all payments of a kind specified in the notice made during the period specified in the notice, being—

(*a*) payments made in the course of carrying on the activity, or such part of the activity as may be specified in the notice, for services rendered in connection with the activity by

persons ordinarily resident in the State and not employed by that body of persons, or

(*b*) periodical or lump sum payments made to persons ordinarily resident in the State in respect of any copyright.

(4) A return required under *subsection (2)* or *(3)* shall, if the trade or business or other activity is carried on by an unincorporated body of persons, be made and delivered by the person who is, or performs the duties of, secretary of the body, and the notice shall be framed accordingly.

(5) A return under this section shall give the name and tax reference number of the person to whom each payment was made, the amount of the payment and such other particulars as may be specified in the notice, including particulars as to—

(*a*) the services or rights in respect of which the payment was made,

(*b*) the period over which any services were rendered, and

(*c*) any business name and any business or home address of the person to whom payment was made.

(6) A return under this section shall include payments made by the person or body of persons in the course of the trade, business or activity on behalf of any other person.

(7) No person shall be required under this section to include in a return—

(*a*) particulars of any payment from which income tax is deductible,

(*b*) particulars of payments made to any one person where the total of the payments to that person which would otherwise have to be included in the return does not exceed £500, or

(*c*) particulars of any payment made in a year of assessment ending more than 3 years before the service of the notice requiring the person to make the return.

(8) A person who fails to deliver, within the period limited in any notice served on the person under this section, a true and correct return which the person is required by the notice to deliver shall be liable to a penalty of £1,200.

(9) Penalties under this section may, without prejudice to any other method of recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise.

(10) In proceedings for the recovery of a penalty under this section, a certificate by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return, and any such certificate, purporting to be signed by an officer of the Revenue Commissioners, may be tendered in evidence without proof and shall be

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deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

Returns by persons in receipt of income belonging to others.

[ITA67 s176; F(MP)A68 s6(5); FA92 s227(c)]

890.—(1) Every person (in this section referred to as ''the first-mentioned person'') who, in whatever capacity, is in receipt of any money or value, or of profits or gains arising from any of the sources mentioned in the Income Tax Acts, of or belonging to any other person who is chargeable in respect of such money, value, profits or gains, or who would be so chargeable if that other person were resident in the State and not an incapacitated person, shall, whenever required to do so by a notice given to the first-mentioned person by an inspector, prepare and deliver, within the period mentioned in such notice, a return in the prescribed form, signed by the first-mentioned person, containing—

(*a*) a statement of all such money, value, profits or gains;

(*b*) the name and address of every person to whom all such money, value, profits or gains belong;

(*c*) a declaration whether every such person is of full age, a married woman, resident in the State or an incapacitated person.

(2) Where the first-mentioned person is acting jointly with any other person, the first-mentioned person shall, in the like manner, deliver a list of the names and addresses of all persons joined with the first-mentioned person at the time of delivery of the return mentioned in *subsection (1)*.

(3) No person shall be required under this section to include in a return particulars of receipts (to which *subsection (1)* applies) of or belonging to any one person where the total of the receipts relating to that person which would otherwise have to be included in the return does not exceed £500.

Returns of interest paid or credited without deduction of tax.

[ITA67 s175; FA83 s17(2); FA95 s168; Postal and Telecommunications Services Act, 1983 s8(1) and Sch4 PtI]

891.—(1) Subject to *subsection (2)*, every person carrying on a trade or business who, in the ordinary course of the operations of the trade or business, receives or retains money in such circumstances that interest becomes payable on that money which is paid or credited without deduction of income tax, and in particular every person carrying on the trade or business of banking, shall, if required to do so by notice from an inspector, make and deliver to the inspector, within the time specified in the notice, a return of all interest so paid or credited by that person during a year specified in the notice in the course of that person's trade or business or any such part of that person's trade or business as may be so specified, giving the names and addresses of the persons to whom the interest was paid or credited and stating in each case the amount of the interest.

(2) (*a*) No interest paid or credited to any person shall be required to be included in any return under *subsection (1)* where the total amount of the interest paid or credited to that person which would otherwise have had to be included in the return does not exceed £50.

(*b*) The year specified in a notice under *subsection (1)* shall not be a year ending more than 3 years before the date of the service of the notice.

(3) Without prejudice to the generality of so much of *subsection (1)* as enables different notices to be served under that subsection in relation to different parts of a trade or business, separate notices may be served under that subsection as respects the transactions carried on at any branch or branches respectively specified in the notices, and any such separate notice shall, if served on the manager or other person in charge of the branch or branches in question, be deemed to have been duly served on the person carrying on the trade or business and, where such a separate notice is so served as respects the transactions carried on at any branch or branches, any notice subsequently served under *subsection (1)* on the person carrying on the trade or business shall not be deemed to extend to any transaction to which that separate notice extends.

(4) (*a*) This section shall, with any necessary modifications, apply in relation to the Post Office Savings Bank as if it were a trade or business carried on by An Post.

(*b*) This subsection shall apply notwithstanding section 4 of the Post Office Savings Bank Act, 1861; but, subject to *paragraph (a)*, that section shall remain in full force and effect.

(5) *Subsections (1)* to *(4)* shall apply only to money received or retained in the State.

(6) (*a*) Subject to *paragraphs (b)* and *(c)*, where a person to whom any interest is paid or credited in respect of any money received or retained in the State by notice in writing served on the person paying or crediting the interest—

(i) declares that the person who was beneficially entitled to that interest when it was paid or credited was not then resident in the State, and

(ii) requests that the interest shall not be included in any return under this section,

the person paying or crediting the interest shall not be required to include the interest in any such return.

(*b*) Where the person on whom a notice under *paragraph (a)* is served is not satisfied that the person who served the notice was resident outside the State when the interest was paid or credited—

(i) there shall be given to the person on whom the notice is served an affidavit, made by the person who served the notice, stating that person's name and address and the country in which that person was resident when the interest was paid or credited, and

(ii) if the person who served the notice was not beneficially entitled to that interest when it was paid or credited, the affidavit shall state, in addition to the particulars specified in *subparagraph (i)*, the name and address of the person who was so entitled and the country in which that person was resident when the interest was paid or credited.

(*c*) Where the person on whom a notice under *paragraph (a)* is served is satisfied that the person who served the notice (in this paragraph referred to as ''the server'') was not

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resident in the State when the interest was paid or credited and, if the server declares in the notice, or in a subsequent notice served on the person on whom the first-mentioned notice was served, that the server was not beneficially entitled to the interest when it was paid or credited, the server shall, if the person so entitled (in this paragraph referred to as ''the beneficial owner'') is resident in the State, state in one of those notices or in a subsequent notice served on the person on whom the first-mentioned notice was served the name and address of the beneficial owner.

(7) A person to whom *subsection (1)* applies—

(*a*) shall keep and retain any notice served on that person in accordance with *subsection (6)*, and any affidavit that accompanied the notice, for a period of 6 years from the date of the service of the notice,

(*b*) shall, if requested in writing by the Revenue Commissioners to do so, inform the Revenue Commissioners within the time specified in the request whether a notice has been served on that person in accordance with *subsection (6)* by such person as is named, and whose address is stated, in the request, and

(*c*) shall, if requested in writing by the Revenue Commissioners to do so, furnish to the Revenue Commissioners within the time specified in the request such notice served on that person in accordance with *subsection (6)* as is specified in the request and the affidavit that accompanied that notice.

Returns by nominee holders of securities.

[FA83 s21(1) and (2)]

892.—(1) In this section, ''securities'' includes—

(*a*) shares, stocks, bonds, debentures and debenture stock of a company (within the meaning of *section 4(1)*) and also any promissory note or other instrument evidencing indebtedness issued to a loan creditor (within the meaning of *section 433(6)*) of a company,

(*b*) securities created and issued by the Minister for Finance under the Central Fund (Permanent Provisions) Act, 1965, or under any other statutory powers conferred on that Minister and any stock, debenture, debenture stock, certificate of charge or other security which is issued with the approval of the Minister for Finance given under any Act of the Oireachtas and in respect of which the payment of interest and the repayment of capital is guaranteed by the Minister for Finance under that Act, and

(*c*) securities of the government of any country or territory outside the State.

(2) Where for any purpose of the Tax Acts any person (in this subsection referred to as ''the holder'') in whose name any securities are registered is so required by notice in writing given by an inspector, the holder shall, within the time specified in the notice, state whether or not the holder is the beneficial owner of the securities and, if not the beneficial owner of the securities or any of them, shall furnish in respect of each person on whose behalf the securities are registered in the holder's name—

(*a*) the name and address of such person,

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(*b*) the nominal value of the securities so registered on behalf of such person and, in so far as the securities consist of shares in a company, the number and class of such shares, and

(*c*) the date on which each security was so registered in the holder's name on behalf of such person.

893.—(1) In this section—

Returns by certain intermediaries in relation to UCITS.

[FA89 s19(1) to (3); FA92 s229]

''distribution'' has the same meaning as it has for the purposes of the Corporation Tax Acts;

''intermediary'' means any person who provides relevant facilities in relation to a relevant UCITS;

''relevant Directives'' means Council Directive 85/611/EEC of 20 December 1985[1] on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), and any Directive amending that Directive;

''relevant facilities'', in relation to a relevant UCITS, means—

(*a*) the marketing in the State of the units of the relevant UCITS,

(*b*) the acting in the State as an intermediary in the purchase of the units of the relevant UCITS by or on behalf of persons resident in the State or in the sale to such persons of such units, and

(*c*) the provision in the State on behalf of the relevant UCITS of facilities for the making of payments to holders of its units, the repurchase or redemption of its units or the making available of the information which the relevant UCITS is duly obliged to provide for the purposes of the relevant Directives;

''relevant UCITS'' means an undertaking which—

(*a*) is situated in a member state of the European Communities other than the State,

(*b*) is a UCITS for the purposes of the relevant Directives, and

(*c*) markets its units in the State;

''tax reference number'', in relation to a person, has the meaning assigned to it by *section 885* in relation to a specified person within the meaning of that section;

''UCITS'' means an undertaking for collective investment in transferable securities to which the relevant Directives relate;

''units'' includes shares and any other instruments granting an entitlement to—

[1]O.J. No. L375 of 31.12.1985.

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(*a*) share in the investments or income of, or

(*b*) receive a distribution from,

a relevant UCITS.

(2) For the purposes of the Tax Acts and the Capital Gains Tax Acts, an intermediary shall, if required to do so by notice from an inspector, prepare and deliver to the inspector within such time, not being less than 30 days, as shall be specified in the notice a return of—

(*a*) the names and addresses and tax reference numbers of all persons resident in the State in respect of whom the intermediary has in the course of providing relevant facilities in relation to a relevant UCITS during such period as shall be specified in the notice—

(i) acted as an intermediary in the purchase by or on behalf of any of those persons of units in the relevant UCITS or in the sale to such persons of such units,

(ii) provided facilities for the making of payments by the relevant UCITS to any of those persons who hold units of the relevant UCITS, and

(iii) provided facilities for the repurchase or redemption of units of the relevant UCITS held by any of those persons,

and

(*b*) where appropriate, in respect of each such person—

(i) the name and address of each relevant UCITS—

(I) the units of which have been so purchased by or on behalf of or sold to that person in that period,

(II) on whose behalf facilities have been provided for the making of payments by the relevant UCITS to that person in that period, and

(III) on whose behalf facilities have been provided for the repurchase or redemption by the relevant UCITS in that period of units in the relevant UCITS held by that person,

and

(ii) (I) the value or total value of the units so purchased by or on behalf of or sold to that person,

(II) the amount of the payments so made by the relevant UCITS to that person, and

(III) the value or total value of the units held by that person which were so repurchased or redeemed by the relevant UCITS.

(3) Where a person resident in the State avails of relevant facilities provided by an intermediary in relation to relevant UCITS,

that person shall furnish to the intermediary details which the intermediary is required to include in a return to the inspector in accordance with *subsection (2)*, or would be required to include in such a return if a notice under the subsection were served on the intermediary, and the intermediary shall take all reasonable care (including, where necessary, the requesting of documentary evidence) to confirm that the details furnished are true and correct.

Returns of certain information by third parties.

[FA92 s226; FA95 s14(2)(i)]

894.—(1) In this section—

''appropriate inspector'', in relation to a person to whom this section applies, means—

(*a*) the inspector who has last given notice in writing to that person that he or she is the inspector to whom that person is required to deliver the return specified in *subsection (3)*,

(*b*) where there is no such inspector as is referred to in *paragraph (a)*, the inspector to whom it is customary for that person to deliver a return or statement of income or profits, or

(*c*) where there is no such inspector as is referred to in *paragraphs (a)* and *(b)*, the inspector of returns specified in *section 950*;

''chargeable period'' has the same meaning as in *section 321(2)*;

''relevant person'' has the meaning assigned to it by *subsection (2)*;

''specified provisions'' means *paragraphs (d)* and *(e)* of *section 888(2)* and *sections 889* to *893*,

''specified return date for the chargeable period'', in relation to a chargeable period, means—

(*a*) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year, and

(*b*) where the chargeable period is an accounting period of a company, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period.

(2) (*a*) Subject to *paragraphs (b)* to *(e)*, ''relevant person'' means any person who—

(i) has information of a kind,

(ii) makes a payment of a kind,

(iii) pays or credits interest of a kind, or

(iv) is in receipt of money or value or of profits or gains of a kind,

referred to in a specified provision.

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(*b*) Subject to *paragraph (e)*, any person who would be excluded from making a return under a specified provision for a chargeable period shall not be a relevant person.

(*c*) A person with information of the kind referred to in *section 892* shall, subject to *paragraph (e)*, be a relevant person only where the person is not the beneficial owner of the securities referred to in that section.

(*d*) A person with information of the kind referred to in *section 893* shall, subject to *paragraph (e)*, be a relevant person only where the person is an intermediary for the purposes of that section.

(*e*) A person who is not a relevant person by virtue of any of the provisions of *paragraphs (b)* to *(d)* shall not be excluded from being a relevant person by virtue of any other provision of this subsection.

(3) Every relevant person shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return of all such matters and particulars as would be required to be contained in a return delivered pursuant to a notice given to the relevant person by the appropriate inspector under any of the specified provisions for the chargeable period.

(4) An inspector may exclude any person from the application of this section by giving that person a notice in writing that that person is excluded from the application of this section, and the notice shall have effect for such chargeable period or periods, or until such chargeable period or the happening of such event, as shall be specified in the notice.

(5) Where it appears appropriate to an inspector, the inspector may notify any relevant person that a return to be made under this section may be confined to a particular type or category of information, payment or receipt and, where the relevant person has been so notified, a return made on that basis shall satisfy this section.

(6) This section shall not affect the giving of a notice under any of the specified provisions and shall not remove from any person any obligation or requirement imposed on a person by such a notice, and the giving of a notice under any of the specified provisions to a person shall not remove from that person any obligation to prepare and deliver a return under this section.

(7) *Sections 1052* and *1054* shall apply to a failure by a relevant person to deliver a return required by *subsection (3)*, and to each and every such failure, as they apply to a failure to deliver a return referred to in *section 1052*.

Returns in relation to foreign accounts.

[FA92 s230(1) to (6)]

895.—(1) In this section—

''appropriate inspector'', in relation to an intermediary or, as may be appropriate, a resident, means—

(*a*) the inspector who has last given notice in writing to the intermediary or, as the case may be, the resident that he or she is the inspector to whom the intermediary or, as

the case may be, the resident is required to deliver a return or statement of income or profits,

(*b*) where there is no such inspector as is referred to in *paragraph (a)*, the inspector to whom it is customary for the intermediary or, as the case may be, the resident to deliver such return or statement, or

(*c*) where there is no such inspector as is referred to in *paragraphs (a)* and *(b)*, the inspector of returns specified in *section 950*;

''chargeable period'' has the same meaning as in *section 321(2)*;

''deposit'' means a sum of money paid to a person on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made;

''foreign account'' means an account in which a deposit is held at a location outside the State;

''intermediary'' means any person carrying on in the State a trade or business in the ordinary course of the operations of which that person provides a relevant service;

''relevant person'' means a person who in the normal course of that person's trade or business receives or holds deposits;

''relevant service'' means the acting in the State as an intermediary in or in connection with the opening of foreign accounts with relevant persons by or on behalf of residents;

''resident'' means a person resident in the State;

''specified return date for the chargeable period'', in relation to a chargeable period, means—

(*a*) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year, and

(*b*) where the chargeable period is an accounting period of a company, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period;

''tax reference number'', in relation to a resident, has the meaning assigned to it by *section 885* in relation to a specified person within the meaning of that section.

(2) Every intermediary shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return specifying in respect of every resident in respect of whom that intermediary has acted in the chargeable period as an intermediary in the opening of a foreign account—

(*a*) the full name and permanent address of the resident,

(*b*) the resident's tax reference number,

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(*c*) the full name and address of the relevant person with whom the foreign account was opened,

(*d*) the date on which the foreign account was opened, and

(*e*) the amount of the deposit made in opening the foreign account.

(3) Where a resident requests an intermediary to provide the resident with a relevant service, the resident shall furnish to the intermediary the details which the intermediary is required to include in the return to the appropriate inspector in accordance with *subsection (2)* and the intermediary shall take all reasonable care (including, where necessary, the requesting of documentary evidence) to confirm that the details furnished are true and correct.

(4) (*a*) Where an intermediary fails—

(i) for any chargeable period to make a return required to be made by the intermediary in accordance with *subsection (2)*,

(ii) to include in such a return for a chargeable period details of any resident to whom the intermediary provided a relevant service in the chargeable period, or

(iii) to take reasonable care to confirm the details of the kind referred to in *subsection (2)* furnished to the intermediary by a resident to whom the intermediary has provided a relevant service in a chargeable period,

the intermediary shall, in respect of each such failure, be liable to a penalty of £2,000.

(*b*) Where a resident fails—

(i) to furnish details of the kind referred to in *subsection (2)* to an intermediary who has provided the resident with a relevant service, or

(ii) knowingly or wilfully furnishes that intermediary with incorrect details of that kind,

the resident shall be liable to a penalty of £2,000.

(5) Penalties under *subsection (4)* may, without prejudice to any other method of recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise.

(6) Where in any chargeable period a resident opens, either directly or indirectly, a foreign account, or causes to be opened a foreign account in relation to which the resident is the beneficial owner of the deposit held in that account, the resident shall, notwithstanding anything to the contrary in *section 950* or *1084*, be deemed for that chargeable period to be a chargeable person for the purposes of *sections 951* and *1084*, and the return of income (within the meaning of *section 1084*) to be delivered by the resident for that chargeable period shall include the following particulars in relation to the account—

(*a*) the name and address of the relevant person with whom the account was opened, PT.38 S.895

(*b*) the date on which the account was opened,

(*c*) the amount of the deposit made in opening the account, and

(*d*) the name and address of the intermediary, if any, who provided a relevant service in relation to the opening of the account.

896.—(1) In this section— Returns in relation to material interest in offshore funds.

[FA92 s230A; FA95 s41]

''material interest'' shall be construed in accordance with *section 743(2)*;

''offshore fund'' has the meaning assigned to it by *section 743(1)*, but a relevant UCITS within the meaning of *section 893(1)* shall not be an offshore fund.

(2) As respects a material interest in an offshore fund, *section 895* shall apply with any necessary modifications where it would not otherwise apply—

(*a*) to every person carrying on in the State a trade or business in the ordinary course of the operations of which such person acts as an intermediary in or in connection with the acquisition of such an interest, in the same manner as it applies to every intermediary within the meaning of that section, and

(*b*) to a person resident or ordinarily resident in the State who acquires such an interest in the same manner as it applies to a person resident in the State opening an account in which a deposit which such person beneficially owns is held at a location outside the State,

as if in that section—

(i) references to a deposit were references to any payment made by a person resident or ordinarily resident in the State in acquiring a material interest in an offshore fund,

(ii) references to a foreign account were references to such an interest,

(iii) references, however expressed, to the opening of a foreign account were references to the acquisition of such an interest, and

(iv) references to a relevant person were references to an offshore fund.

897.—(1) (*a*) In this section, the references to payments made to persons in respect of their employment and to the remuneration of persons in their employment shall be deemed to include references to— Returns of employees' emoluments, etc.

[ITA67 s120(1) and (2), s123 and s178; F(MP)A68 s3(2) and Sch PtI; FA82 s4(7) and s8(6); FA97 s11(4)]

(i) any payments made to employed persons in respect of expenses,

(ii) any payments made on behalf of employed persons and not repaid, and

(iii) any payments made to the employees in a trade or business for services rendered in connection with the trade or business, whether the services were rendered in the course of their employment or not.

(*b*) The reference in *paragraph (a)(i)* to payments made to employed persons in respect of expenses includes a reference to sums put at the disposal of an employed person and paid away by the employed person.

(2) Every employer, when required to do so by notice from an inspector, shall within the time limited by the notice prepare and deliver to the inspector a return containing—

(*a*) the names and places of residence of all persons employed by that employer,

(*b*) particulars of any car (within the meaning of *section 121*) made available to those persons by reason of that employment,

(*c*) particulars of any preferential loan (within the meaning of *section 122*) made, released or written off by that employer in whole or in part and particulars of any interest released, written off or refunded by that employer in whole or in part and which was payable or paid on such loan,

(*d*) particulars of any relevant scholarships (within the meaning of *section 193*) in relation to those persons, not being a payment made before the 6th day of April, 1998, in respect of a scholarship (within the meaning of that section) awarded before the 26th day of March, 1997, and

(*e*) particulars of the payments made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the year does not exceed £1,500.

(3) Where the employer is a body of persons, the secretary of the body or other officer (by whatever name called) performing the duties of secretary shall be deemed to be the employer for the purposes of this section, and any director (within the meaning of *section 116*) of a body corporate (including a company), or person engaged in the management of that body corporate, shall be deemed to be a person employed.

(4) Where an employer is a body corporate (including a company), that body corporate, as well as the secretary or other officer performing the duties of secretary of the body corporate, shall be liable to a penalty for failure to deliver a return under this section.

(5) An employer shall not be liable to any penalty for omitting from any return under *subsection (2)* the name or place of residence of any person employed by the employer and not employed in any other employment, where it appears to the Revenue Commissioners that such person is entitled to total exemption from tax.

(6) Where for the purposes of a return under this section an employer apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters—

(*a*) the return shall contain a statement that the sum included in the return is the result of such an apportionment,

(*b*) the employer, if required to do so by notice from the inspector, shall prepare and deliver to the inspector within the time limited by the notice a return containing full particulars as to the amount apportioned and the manner in which and the grounds on which the apportionment has been made, and

(*c*) where the inspector is dissatisfied with any such apportionment of expenses, the inspector may for the purposes of assessment apportion the expenses, but the employer may, on giving notice in writing to the inspector within 21 days after being notified of any such apportionment made by the inspector, appeal against that apportionment to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (6)* as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

Returns of copies of rates and production of certain valuations.

[FA74 s73(1) to (4); CTA76 s147(1) and (2)]

898.—(1) In this section, ''rating authority'' means—

(*a*) the corporation of a county or other borough,

(*b*) the council of a county, or

(*c*) the council of an urban district.

(2) For the purpose of assessing tax chargeable under Schedule D, the secretary, clerk, or person acting as such, to a rating authority shall, when required by notice from an inspector, transmit to the inspector within such time as may be specified in the notice true copies of the last county rate or municipal rate made by the authority for its rating area or any part of that area.

(3) The Revenue Commissioners shall pay to any such person the expenses of making all such copies, not exceeding the rate of £1 for every 100 ratings.

(4) Every person shall, at the request of any inspector or other officer acting in the execution of the Tax Acts, produce as soon as may be to such inspector or officer, as appropriate, any survey, valuation or record on which the rates for any rating area or part of any such area are assessed, made or collected, or any rate or assessment made under any Act relating to the county rate or municipal rate, which is in that person's custody or possession, and shall permit the inspector or other officer to inspect the same and to take copies of or extracts from any such survey, valuation or record, without any payment.

Revenue powers

Inspector's right to make enquiries.

[FA92 s228; FA95 s14(2)(ii)]

899.—(1) In this section, ''specified provisions'' means *paragraphs (d)* and *(e)* of *section 888(2)*, *sections 889* and *890*, and *sections 892* to *894*.

(2) An inspector may make such enquiries or take such action within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of any return, list, statement or particulars prepared and delivered under a specified provision.

(3) *Subsection (2)* shall not apply in respect of a return made under *section 894* of such matters and particulars as would be required to be contained in a return delivered pursuant to a notice given to a relevant person by the appropriate inspector under *section 891* for the chargeable period.

Power to require production of accounts and books.

[ITA67 s70(3B) and s174; FA76 s3; FA79 s30]

900.—(1) In this section, ''authorised officer'' means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section.

(2) Subject to *subsection (3)*, where any person who has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession fails to deliver the statement, or where the inspector is not satisfied with the statement delivered by that person, an authorised officer may serve on that person a notice in writing or notices in writing requiring that person to do any of the following—

(*a*) to deliver to an inspector or to the authorised officer copies of such accounts (including balance sheets) relating to the trade or profession as may be specified or described in the notice within such period as may be specified in the notice, including where the accounts have been audited a copy of the auditor's certificate;

(*b*) to make available, within such time as may be specified in the notice, for inspection by an inspector or by an authorised officer, all such books, accounts and documents in that person's possession or power as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade or profession.

(3) (*a*) In this subsection, ''precedent partner'' has the same meaning as in *Part 43*.

(*b*) In the case of a partnership carrying on a trade or profession, where a precedent partner who has been duly required by an inspector to deliver a statement of the profits or gains arising to the partnership from any trade or profession fails to deliver the statement, or where the inspector is not satisfied with the statement delivered by the precedent partner, an authorised officer may serve on the precedent partner a notice in writing or notices in writing requiring the precedent partner to do any of the following—

(i) to deliver to an inspector or to the authorised officer copies of such accounts (including balance sheets) relating to the trade or profession as may be specified or described in the notice within such period as may be specified in the notice, including where the accounts have been audited a copy of the auditor's certificate;

(ii) to make available, within such time as may be specified in the notice, for inspection by an inspector or by the authorised officer, all such books, accounts and documents in the precedent partner's possession or power or in the possession or power of the partnership as may be specified or described in the notice, being books, accounts and documents which contain information as to transactions of the trade or profession.

(4) The inspector or authorised officer may take copies of or extracts from any books, accounts or documents made available for his or her inspection under this section.

Power to require delivery of books and papers relating to tax.

[ITA67 s539; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

901.—(1) Any person who has custody or possession of any books or papers relating to income tax or corporation tax shall, within one month next after notice in writing from the Revenue Commissioners requiring that person to do so, deliver such books or papers to the person named in the notice and, if the first-mentioned person fails to do so, that person shall incur a penalty of £50 for every such offence.

(2) The receipt of the person named in the notice shall be a sufficient discharge to the person delivering the books or papers.

Power to obtain from certain persons particulars of transactions with and documents concerning tax liability of taxpayer.

[FA79 s31; FA92 s238]

902.—(1) (*a*) In this section—

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''business'' means any trade, profession or business (other than banking business within the meaning of the Central Bank Act, 1971);

''documents'' means those records required to be kept or retained under *section 886*;

''tax'' means income tax or corporation tax.

(*b*) The persons who may be treated as the taxpayer under this section include a company which has ceased to exist and an individual who has died and, in relation to such an individual, the reference in *subsection (2)* to the spouse shall be construed as a reference to the widow or widower (the circumstance that she or he may have remarried being immaterial for the purposes of that subsection).

(*c*) The persons who in relation to a taxpayer are subject to this section shall be any person who is carrying on a business or was doing so at a material time, and any company whether carrying on a business or not.

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(2) (*a*) For the purposes of this subsection, every director of a company shall be taken as being concerned with the management of any business carried on by the company, and a material time shall be any time which in the authorised officer's opinion is or may have been material in the ascertainment of any past or present tax liability of the taxpayer.

(*b*) Where a person (in this section referred to as ''the taxpayer'')—

(i) delivers to an inspector a return or statement of the income, profits or gains arising to the taxpayer from—

(I) any business (past or present) carried on by the taxpayer or his or her spouse, or

(II) any business (past or present) with whose management either of them was concerned at a material time,

and the inspector is not satisfied with the return or statement, or

(ii) fails to deliver such a return or statement which the taxpayer is required to deliver under any provision of the Tax Acts,

the inspector may serve on the taxpayer a notice in writing stating—

(A) that the inspector is not satisfied with the return or statement delivered to him or her or, as the case may be, that such return or statement has not been delivered to the inspector, and

(B) that the inspector has requested an authorised officer to serve notice under this section on persons who in relation to the taxpayer are subject to this section.

(3) Where a notice under *subsection (2)* has been served on the taxpayer, an authorised officer may, for the purpose of enquiring into the tax liability of the taxpayer, by notice in writing served on any person who in relation to the taxpayer is subject to this section, require that person, within the period stated in the notice or such further period as the authorised officer may allow—

(*a*) to furnish the authorised officer with particulars of any business transactions which that person had with the taxpayer during a stated period, and

(*b*) to deliver to the authorised officer or, if the person to whom the notice is given so elects, to make available for inspection by an authorised officer such documents specified or described in the notice as are in that person's possession or power and as, in the first-mentioned officer's opinion, contain or may contain information relevant to any tax liability to which the taxpayer is, may be or may have been subject, or to the amount of any such tax liability.

(4) Nothing in this section shall be construed as requiring a person who is carrying on a profession and on whom a notice under *subsection (3)* has been served to furnish any particulars relating to a client to an authorised officer, or to deliver to, or make available for inspection by, an authorised officer any documents relating to a client, other than such particulars or documents—

(*a*) as pertain to the payment of fees or to other financial transactions, or

(*b*) as are otherwise material to the tax liability of the client,

and in particular such person shall not be required to disclose any information or professional advice of a confidential nature given to a client.

(5) Where a person fails to comply with a requirement duly made on the person under *subsection (3)* within the period stated in the notice containing the requirement or within such further period as may be allowed by the authorised officer concerned, the person shall be liable to a penalty of £1,000.

(6) Where documents are to be delivered to an authorised officer pursuant to a requirement duly made under *subsection (3)*, copies of such documents may be delivered instead of the originals; but—

(*a*) the copies shall be photographic or otherwise by means of facsimile, and

(*b*) if so required by the authorised officer, the originals shall be made available for inspection by an authorised officer, failure to comply with this provision being treated as failure to comply with the requirement.

(7) An authorised officer may examine any documents furnished or made available for inspection under this section and may take copies of or extracts from them or retain them for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(8) When exercising any powers conferred by this section, an authorised officer shall if so requested by any person affected produce to that person a certificate of the Revenue Commissioners authorising him or her to exercise the powers conferred by this section.

903.—(1) In this section—

Power of inspection: PAYE.

[ITA67 s127A; FA92 s233]

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''emoluments'', ''employer'' and ''tax deduction card'' have the same meanings respectively as in *Chapter 4* of *Part 42*;

''records'' means any personnel records relating to the payment of emoluments or the provision of benefits in kind or perquisites, payroll files, wages sheets, certificates of tax-free allowances, tax deduction cards, certificates issued in accordance with regulation 22 of the Income Tax (Employment) Regulations, 1960 (S.I. No. 28 of 1960), including any data (within the meaning of *section 912*) stored by any means approved under *section 887* or by any other means or

any other information or documents which the authorised officer may reasonably require.

(2) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

(*a*) an employer is or has been carrying on any activity as an employer,

(*b*) any person is or was either paying emoluments or providing benefits in kind or perquisites,

(*c*) any person is or was in receipt of emoluments, benefits in kind or perquisites, or

(*d*) records are or may be kept,

and the authorised officer—

(i) may require any employer or any other person who is on those premises or in that place, other than a person who is there to purchase goods or to receive a service, to produce any records which the authorised officer requires for the purposes of his or her enquiry,

(ii) may, if the authorised officer has reason to believe that any of the records he or she has required to be produced to him or her under *paragraph (i)* have not been so produced, search on those premises or in that place for those records, and

(iii) may examine, make copies of, take extracts from, remove and retain any records for further examination or for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(3) An authorised officer may require any person, other than a person purchasing goods or receiving a service from an employer, to give the authorised officer all reasonable assistance, including providing information and explanations and furnishing documents required by the authorised officer.

(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request produce his or her authorisation for the purposes of this section.

(5) A person who does not comply with the requirements of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(6) The records referred to in this section shall be retained by the employer for a period of 6 years after the end of the year to which they refer or for such shorter period as the Revenue Commissioners may authorise in writing to the employer.

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Power of inspection: tax deduction from payments to certain subcontractors.

[FA70 s17A; FA92 s235]

904.—(1) In this section—

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''principal'', ''relevant contract'', ''relevant operations'' and ''subcontractor'' have the same meanings respectively as in *Chapter 2* of *Part 18*;

''records'' means those records required to be kept—

(*a*) under *section 531* and regulations made under that section, and

(*b*) under *section 886*.

(2) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

(*a*) any relevant operations are or have been carried on,

(*b*) any person is making or has made payments to a subcontractor in connection with the performance by the subcontractor of a relevant contract in relation to which that person is the principal,

(*c*) any person is or has been in receipt of such payments, or

(*d*) records are or may be kept,

and the authorised officer may—

(i) require any principal or subcontractor, or any employee of, or any other person providing bookkeeping, clerical or other administrative services to, any principal or subcontractor, who is on that premises or in that place to produce any records which the authorised officer requires for the purpose of his or her enquiry,

(ii) if the authorised officer has reason to believe that any of the records he or she has required to be produced to him or her under this subsection have not been so produced, search on those premises or in that place for those records, and

(iii) examine, make copies of, take extracts from, remove and retain any records for a reasonable period for their further examination or for the purpose of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings.

(3) An authorised officer may require any principal or subcontractor, or any employee of, or any other person providing bookkeeping, clerical or other administrative services to, any principal or subcontractor, to give the authorised officer all reasonable assistance, including providing information and explanations and furnishing documents required by the authorised officer.

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(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request produce his or her authorisation for the purposes of this section.

(5) A person who does not comply with the requirements of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(6) The records referred to in this section shall be retained for a period of 6 years after the end of the year to which they refer or for such shorter period as the Revenue Commissioners may authorise in writing.

Inspection of documents and records.

[FA76 s34; FA92 s232]

905.—(1) In this section—

''authorised officer'' means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''property'' means any asset relating to a tax liability;

''records'' means any document or any other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, which a person is obliged by any provision relating to tax to keep, retain, issue or produce for inspection or which may be inspected under any provision relating to tax;

''tax'' means any tax, duty, levy or charge under the care and management of the Revenue Commissioners;

''tax liability'' means any existing liability to tax or further liability to tax which may be established by an authorised officer following the exercise or performance of his or her powers or duties under this section.

(2) (*a*) An authorised officer may at all reasonable times enter any premises or place where the authorised officer has reason to believe that—

(i) any trade, profession or other activity, the profits or gains of which are chargeable to tax, is or has been carried on,

(ii) anything is or has been done in connection with any trade, profession or other activity the profits or gains of which are chargeable to tax,

(iii) any records relating to—

(I) any trade, profession, other source of profits or gains or chargeable gains,

(II) any tax liability, or

(III) any repayments of tax in regard to any person,

are or may be kept, or

(iv) any property is or has been located,

and the authorised officer may—

(A) require any person who is on those premises or in that place, other than a person who is there to purchase goods or to receive a service, to produce any records or property,

(B) if the authorised officer has reason to believe that any of the records or property which he or she has required to be produced to him or her under this subsection have not been produced, search on those premises or in that place for those records or property,

(C) examine any records or property and take copies of or extracts from any records,

(D) remove any records and retain them for a reasonable time for the purposes of their further examination or for the purposes of any legal proceedings instituted by an officer of the Revenue Commissioners or for the purposes of any criminal proceedings, and

(E) examine property listed in any records.

(*b*) An authorised officer may in the exercise or performance of his or her powers or duties under this section require any person whom he or she has reason to believe—

(i) is or was carrying on any trade, profession or other activity the profits or gains of which are chargeable to tax,

(ii) is or was liable to any tax, or

(iii) has information relating to any tax liability,

to give the authorised officer all reasonable assistance, including providing information and explanations or furnishing documents and making available for inspection property as required by the authorised officer in relation to any tax liability or any repayment of tax in regard to any person.

(*c*) Nothing in this subsection shall be construed as requiring any person carrying on a profession, or any person employed by any person carrying on a profession, to produce to an authorised officer any documents relating to a client, other than such documents—

(i) as pertain to the payment of fees to the person carrying on the profession or to other financial transactions of the person carrying on the profession,

(ii) as are otherwise material to the tax liability of the person carrying on the profession, or

(iii) as are already required to be provided following a request issued under section 16 of the Stamp Act, 1891,

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and in particular that person shall not be required to disclose any information or professional advice of a confidential nature given to a client.

(*d*) This subsection shall not apply to any premises or place where a banking business (within the meaning of the Central Bank Act, 1971) is carried on or to any person or an employee of any person carrying on such a business.

(*e*) An authorised officer shall not, without the consent of the occupier, enter any premises, or that portion of any premises, which is occupied wholly and exclusively as a private residence, except on production by such officer of a warrant issued by a Judge of the District Court expressly authorising the authorised officer to so enter.

(*f*) A Judge of the District Court may issue a warrant under *paragraph (e)* if satisfied by information on oath that it is proper to do so for the purposes of this section.

(3) A person who does not comply with any requirement of an authorised officer in the exercise or performance of the authorised officer's powers or duties under this section shall be liable to a penalty of £1,000.

(4) An authorised officer when exercising or performing his or her powers or duties under this section shall on request show his or her authorisation for the purposes of this section.

Authorised officers and Garda Síochána.

[FA92 s236]

906.—Where an authorised officer (within the meaning of *section 903*, *904* or *905*, as the case may be) in accordance with *section 903*, *904* or *905* enters any premises or place, the authorised officer may be accompanied by a member or members of the Garda Síochána, and any such member may arrest without warrant any person who obstructs or interferes with the authorised officer in the exercise or performance of his or her powers or duties under any of those sections.

Application to Appeal Commissioners seeking determination that authorised officer justified in requiring information to be furnished by financial institutions.

[WCTIPA93 s13]

907.—(1) In this section—

''authorised officer'' means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''books'' means—

(*a*) bankers' books within the meaning of the Bankers' Books Evidence Acts, 1879 and 1959, and

(*b*) records and documents of persons referred to in section 7(4) of the Central Bank Act, 1971;

''financial institution'' means—

(*a*) a person who holds or has held a licence under section 9 of the Central Bank Act, 1971, and

(*b*) a person referred to in section 7(4) of that Act;

''person'' (other than in the definition of ''financial institution'') means an individual who is ordinarily resident in the State.

(2) Notwithstanding any other provision of the Tax Acts, where— PT.38 S.907

(*a*) a person who for the purposes of tax has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession or to deliver to the inspector a return of income fails to deliver that statement or that return to the inspector, or

(*b*) the inspector is not satisfied with such a statement or return so delivered,

an authorised officer may—

(i) if the authorised officer has reasonable grounds to believe that that person maintains or maintained an account or accounts (being an account or accounts from which the person may withdraw moneys), the existence of which has not been disclosed to the Revenue Commissioners, with a financial institution or that there is likely to be information in the books of that institution indicating that that statement of profits or gains or that return of income is false to a material extent, and

(ii) on application by the authorised officer to the Appeal Commissioners, they determine that in all the circumstances the authorised officer is justified in requiring the financial institution to furnish him or her—

(I) with particulars of all accounts maintained by that person, either solely or jointly with any other person or persons, in that institution during a period not exceeding 10 years immediately preceding the date of the application, and

(II) with such information as may be specified by the authorised officer with the consent of the Appeal Commissioners relating to the financial transactions of that person, being information recorded in the books of that institution which would be material in determining the correctness of the statement of profits or gains or the return of income delivered by that person or, in the event of failure to deliver such statement or return, would be material in determining the liability of that person to tax,

require that financial institution to furnish such particulars or information.

(3) An application by an authorised officer under *subsection (2)* shall with any necessary modifications be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax, and a copy of the application shall, as soon as is practicable, be furnished by the authorised officer to the financial institution concerned and the person concerned, and that financial institution and that person shall be entitled—

(*a*) to be present during all the time of the hearing of the application,

(*b*) to produce lawful evidence, and

(*c*) to be represented by—

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(i) a barrister,

(ii) a solicitor,

(iii) an accountant (being any person who has been admitted and is a member of an incorporated society of accountants),

(iv) a person who has been admitted and is a member of the body incorporated under the Companies Act, 1963, on the 31st day of December, 1975, as ''The Institute of Taxation in Ireland'', or

(v) such other person as the Appeal Commissioners permit,

to plead on their behalf before the Appeal Commissioners.

(4) *Section 941* shall apply with any necessary modifications to a determination by the Appeal Commissioners under *subsection (2)* as it applies to the determination by those Commissioners of an appeal against an assessment to income tax.

(5) Where the Appeal Commissioners have made a determination in accordance with *subsection (2)*, the authorised officer shall, as soon as practicable but not later than 14 days from the time at which such determination was made, give a notice in writing to the financial institution concerned and the person concerned stating that—

(*a*) such a determination has been made, and

(*b*) the financial institution should, within a period of 30 days from the time at which the financial institution received such notice, furnish the particulars or information as may be specified in the notice.

(6) A financial institution which fails to comply with a request issued to it by an authorised officer in accordance with *subsection (2)* shall be liable to a penalty of £15,000 and, if the failure continues after the expiry of the period specified in *subsection (5)(b)*, a further penalty of £2,000 for each day on which the failure so continues.

Application to High Court seeking order requiring information to be furnished by financial institutions.

[FA83 s18; DCITPA96 s10]

908.—(1) In this section—

''authorised officer'' means an inspector or other officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section;

''books'', ''financial institution'' and ''person'' have the same meanings respectively as in *section 907*;

''judge'' means a judge of the High Court.

(2) Where—

(*a*) a person who for the purposes of tax has been duly required by an inspector to deliver a statement of the profits or gains arising to that person from any trade or profession or to deliver to the inspector a return of income fails to deliver that statement or that return to the inspector, or

(*b*) the inspector is not satisfied with such a statement or return so delivered, PT.38 S.908

an authorised officer may, if he or she is of opinion that that person maintains or maintained an account or accounts, the existence of which has not been disclosed to the Revenue Commissioners, with a financial institution or that there is likely to be information in the books of that institution indicating that that statement of profits or gains or that return of income is false to a material extent, apply to a judge for an order requiring that financial institution to furnish the authorised officer—

(i) with full particulars of all accounts maintained by that person, either solely or jointly with any other person or persons, in that institution during a period not exceeding 10 years immediately preceding the date of the application, and

(ii) with such information as may be specified in the order relating to the financial transactions of that person, being information recorded in the books of that institution which would be material in determining the correctness of the statement of profits or gains or the return of income delivered by that person or, in the event of failure to deliver such statement or return, would be material in determining the liability of that person to tax.

(3) Where the judge to whom an application is made under *subsection (2)* is satisfied that there are reasonable grounds for making the application, that judge may, subject to such conditions as he or she may consider proper and specify in the order, make an order requiring the financial institution to furnish the authorised officer with such particulars and information as may be specified in the order.

(4) Where a judge makes an order under this section, he or she may also, on the application of the authorised officer concerned, make a further order prohibiting, for such period as the judge may consider proper and specify in the order, any transfer of, or any dealing with, without the consent of the judge, any assets or moneys of the person to whom the order relates that are in the custody of the financial institution at the time the order is made.

(5) (*a*) Where—

(i) a copy of any affidavit and exhibits grounding an application under *subsection (2)* or *(4)* and any order made under *subsection (3)* or *(4)* are to be made available to any of the persons referred to in *subsection (2)* or any of those persons' solicitor, or to the financial institution, as the case may be, and

(ii) the judge is satisfied on the hearing of the application that there are reasonable grounds in the public interest that such copy of an affidavit, exhibits or order, as the case may be, should not include the name or address of the authorised officer,

such copy, copies or order shall not include the name or address of that authorised officer.

(*b*) Where, on any application to the judge to vary or discharge an order made under this section, it is desired to cross-examine the deponent of any affidavit filed by or

on behalf of the authorised officer and the judge is satisfied that there are reasonable grounds in the public interest to so order, the judge shall order either or both of the following—

(i) that the name and address of the authorised officer shall not be disclosed in court, and

(ii) that such cross-examination shall only take place in the sight and hearing of the judge and in the hearing only of all other persons present at such cross-examination.

(6) Every hearing of an application for an order under this section and of any appeal in connection with that application shall be held in camera.

Power to require return of property.

[FA83 s20; FA92 s239]

909.—(1) (*a*) In this section—

''asset'' includes any interest in an asset;

''limited interest'' means—

(i) an interest (other than a leasehold interest) for the duration of a life or lives or for a period certain, or

(ii) any other interest which is not an absolute interest;

''prescribed'' means prescribed by the Revenue Commissioners;

''property'' includes interests and rights of any description and, without prejudice to the generality of the foregoing, includes—

(i) in the case of a limited interest, the property in which the limited interest subsists or on which it is charged or secured or on which there exists a right to have it charged or secured,

(ii) an interest in expectancy,

(iii) an interest or share in a partnership, joint tenancy or estate of a deceased person,

(iv) stock or shares in a company which is in the course of liquidation,

(v) an annuity, and

(vi) property comprised in a settlement which the person concerned is empowered to revoke;

''settlement'' has the same meaning as in *section 794*;

''specified date'', in relation to a notice under *subsection (2)*, means the date specified in the notice;

''tax'' means income tax and capital gains tax.

(*b*) For the purposes of this section, the cost of acquisition to a person of an asset shall include—

(i) the amount or value of the consideration, in money or money's worth, given by the person or on the person's behalf for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure incurred by the person in providing the asset, and

(ii) the amount of any expenditure incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the specified date, and any expenditure incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset.

(2) Where for the purposes of tax a person is required under any provision of the Tax Acts or the Capital Gains Tax Acts to deliver a tax return to an inspector of taxes or to the inspector of returns (within the meaning of *section 951(11)*), as the case may be, the inspector may require—

(*a*) that person, by notice in writing given to that person, and

(*b*) where that person and his or her spouse are, for the year of assessment to which the tax return relates, treated as living together for the purpose of *section 1015*, that person's spouse, by notice in writing given to the spouse,

to deliver to the inspector within the time specified in the notice or within such further period as the inspector may allow a statement of affairs in the prescribed form as at the date specified in the notice, and that person or that person's spouse shall, if required by further notice or notices in writing by the inspector, deliver to the inspector within such time, not being less than 30 days, as may be specified in such further notice or notices, a statement verifying such statement of affairs together with such evidence, statement or documents required by the inspector in respect of any asset or liability shown on the statement of affairs, or in respect of any asset or liability which the inspector has reason to believe has been omitted from the statement of affairs.

(3) (*a*) In this section, ''statement of affairs'', in relation to a notice under *subsection (2)*, means—

(i) where the person to whom notice is given is an individual who is a chargeable person and the tax return concerned relates to income or capital gains in respect of which that individual is chargeable to tax otherwise than in a representative capacity or as a trustee, a statement of all the assets wherever situated to which that individual is beneficially entitled on the specified date and all the liabilities for which that individual is liable on the specified date,

(ii) where the person to whom notice is given is the spouse of an individual referred to in *subparagraph (i)*, a statement of all the assets wherever situated

to which that spouse is beneficially entitled on the specified date and all the liabilities for which that spouse is liable on the specified date,

(iii) where the person to whom notice is given is a chargeable person in a representative capacity and the tax return concerned relates to income or capital gains of a person (in this paragraph referred to as ''the second-mentioned person'') in respect of which that chargeable person is so chargeable, a statement of all the assets wherever situated to which the second-mentioned person is beneficially entitled and which give rise to income or capital gains in respect of which that chargeable person is chargeable to tax in a representative capacity and all the liabilities for which the second-mentioned person is liable, or which are assets or liabilities in relation to which that chargeable person performs functions or duties in such a capacity on the specified date, or

(iv) where the person to whom notice is given is a chargeable person as a trustee of a trust and the tax return concerned relates to income or capital gains of a trust, a statement of all the assets and liabilities comprised in the trust on the specified date.

(*b*) Any assets to which a minor child of an individual referred to in *subparagraph (i)* or *(ii)* of *paragraph (a)* is beneficially entitled shall be included in that individual's statement of affairs under this section where—

(i) such assets at any time before their acquisition by the minor child were disposed of by that individual whether to the minor child or not, or

(ii) the consideration for the acquisition of such assets by the minor child was provided directly or indirectly by that individual.

(4) (*a*) A statement of affairs delivered under this section shall contain in relation to each asset included in the statement—

(i) a full description,

(ii) its location on the specified date,

(iii) the cost of acquisition to the person beneficially entitled to that asset,

(iv) the date of acquisition, and

(v) if it was acquired otherwise than by means of a bargain at arm's length, the name and address of the person from whom it was acquired and the consideration, if any, given to that person in respect of its acquisition.

(*b*) A statement of affairs delivered under this section shall, in the case of an asset which is an interest other than an absolute interest, contain particulars of the title under which the beneficial entitlement arises.

(*c*) A statement of affairs delivered under this section shall be signed by the person by whom it is delivered and shall include a declaration by that person that it is to the best of that person's knowledge, information and belief correct and complete. Pt.38 S.909

(*d*) The Revenue Commissioners may require the declaration mentioned in *paragraph (c)* to be made on oath.

Power to obtain information from Minister of the Government.

[FA95 s175]

910.—(1) For the purposes of the assessment, charge, collection and recovery of any tax or duty placed under their care and management, the Revenue Commissioners may, by notice in writing, request any Minister of the Government to provide them with such information in the possession of that Minister in relation to payments for any purposes made by that Minister, whether on that Minister's own behalf or on behalf of any other person, to such persons or classes of persons as the Revenue Commissioners may specify in the notice and a Minister so requested shall provide such information as may be specified.

(2) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Valuation of assets: power to inspect.

[CGTA75 s51(1) and Sch4 par14]

911.—(1) For the purposes of the Capital Gains Tax Acts, an inspector or other officer mentioned in *section 931(1)* shall be authorised to inspect any property for the purpose of ascertaining its market value and the person having the custody or possession of that property shall permit the inspector or other officer so authorised, on producing if so required evidence of his or her authority, to inspect it at such reasonable times as the Revenue Commissioners may consider necessary.

(2) *Section 1057* shall apply to an inspector or other officer referred to in *subsection (1)* and to a person acting in the aid of such an inspector or officer as it applies in relation to the persons referred to in *paragraphs (a)* and *(b)* of *subsection (1)* of that section.

Computer documents and records.

[FA92 s237]

912.—(1) In this section—

"the Acts" means—

(*a*) the Customs Acts,

(*b*) the statutes relating to the duties of excise and to the management of those duties,

(*c*) the Tax Acts,

(*d*) the Capital Gains Tax Acts,

(*e*) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(*f*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and

(*g*) Part VI of the Finance Act, 1983,

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and any instruments made thereunder;

''data'' means information in a form in which it can be processed;

''data equipment'' means any electronic, photographic, magnetic, optical or other equipment for processing data;

''processing'' means performing automatically logical or arithmetical operations on data, or the storing, maintenance, transmission, reproduction or communication of data;

''records'' means documents which a person is obliged by any provision of the Acts to keep, issue or produce for inspection, and any other written or printed material;

''software'' means any sequence of instructions used in conjunction with data equipment for the purpose of processing data or controlling the operation of the data equipment.

(2) Any provision under the Acts which—

(*a*) requires a person to keep, retain, issue or produce any records or cause any records to be kept, retained, issued or produced, or

(*b*) permits an officer of the Revenue Commissioners—

(i) to inspect any records,

(ii) to enter premises and search for any records, or

(iii) to take extracts from or copies of or remove any records,

shall, where the records are processed by data equipment, apply to the data equipment together with any associated software, data, apparatus or material as it applies to the records.

(3) An officer of the Revenue Commissioners may in the exercise or performance of his or her powers or duties require—

(*a*) the person by or on whose behalf the data equipment is or has been used, or

(*b*) any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material,

to afford him or her all reasonable assistance in relation to the exercise or performance of those powers or duties.

CHAPTER 5

Capital gains tax: returns, information, etc.

Application of income tax provisions relating to returns, etc.

[CGTA75 s51(1) and Sch4 par3(1), (2) (part of) and (3) to (5), par10(1) and par19; FA92 s246]

913.—(1) The provisions of the Income Tax Acts relating to the making or delivery of any return, statement, declaration, list or other document, the furnishing of any particulars, the production of any document, the making of anything available for inspection, the delivery of any account or the making of any representation, shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax.

(2) In particular and without prejudice to *subsection (1)*, *sections 876* to *880*, *sections 888* and *900* and *paragraph 1* of *Schedule 1* shall,

subject to any necessary modifications, apply in relation to capital gains tax.

(3) A notice under any provision of the Income Tax Acts as applied by this section may require particulars of any assets acquired by the person on whom the notice was served (or, if the notice relates to income or chargeable gains of some other person for whom the person who receives the notice is required to make a return under *section 878*, as so applied by this section, of any assets acquired by that other person) in the period specified in the notice, being a period beginning not earlier than the 6th day of April, 1974, but excluding—

(*a*) any assets exempted by *section 607* or *613*, or

(*b*) any assets acquired as trading stock.

(4) The particulars required under this section may include particulars of the person from whom the asset was acquired and of the consideration for the acquisition.

(5) (*a*) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the disposal of an asset shall for the purposes of this section constitute such a disposal.

(*b*) An event which, apart from *section 584(3)* as applied by *section 586* or *587*, would constitute the acquisition of an asset shall for the purposes of this section constitute such an acquisition.

(6) *Section 888* as applied by this section shall apply to property or leases of property other than premises as it applies to premises or leases of premises.

(7) A return of income of a partnership under *section 880* shall include—

(*a*) with respect to any disposal of partnership assets during a period to which any part of the return relates, the like particulars as if the partnership were liable to tax on any chargeable gain accruing on the disposal, and

(*b*) with respect to any acquisition of partnership assets, the particulars required by *subsection (3)*.

(8) A return under *section 879* as applied by this section in relation to chargeable gains accruing to a married woman in a year of assessment, or part of a year of assessment, during which she is a married woman and living with her husband may be required either from her or, if her husband is liable under *section 1028(1)*, from him.

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Returns by issuing houses, stockbrokers, auctioneers, etc.

[CGTA75 s51(1) and Sch4 par4; FA94 s63; FA95 s70]

914.—(1) For the purpose of obtaining particulars of chargeable gains, an inspector may by notice in writing require a return under any provision of this section.

(2) (*a*) In this subsection, ''shares'' includes units in a unit trust.

(*b*) An issuing house or other person carrying on a business of effecting public issues of shares or securities in any company, or placings of shares or securities in any company, either on behalf of the company or on behalf of holders of blocks of shares or securities which have not previously been the subject of a public issue or placing, may be required to make a return of all such public issues or placings effected by that person in the course of the business in the period specified in the notice requiring the return, giving particulars of the persons to or with whom the shares or securities are issued, allotted or placed, and the number or amount of the shares or securities so obtained by them respectively.

(3) A person not carrying on such a business may be required to make a return as regards any such issue or placing effected by that person and specified in the notice, giving particulars of the persons to or with whom the shares or securities are issued, allotted or placed and the number or amount of the shares or securities so obtained by them respectively.

(4) A member of a stock exchange in the State may be required to make a return giving particulars of any transactions effected by that member in the course of that member's business in the period specified in the notice requiring the return and giving particulars of—

(*a*) the parties to the transactions,

(*b*) the number or amount of the shares or securities dealt with in the respective transactions, and

(*c*) the amount or value of the consideration.

(5) A person (other than a member of a stock exchange in the State) who acts as an agent in the State in transactions in shares or securities may be required to make a return giving particulars of—

(*a*) any such transactions effected by that person in the period specified in the notice,

(*b*) the parties to the transactions,

(*c*) the number or amount of the shares or securities dealt with in the respective transactions, and

(*d*) the amount or value of the consideration.

(6) An auctioneer and any person carrying on a trade of dealing in any description of tangible movable property, or of acting as an agent or intermediary in dealings in any description of tangible movable property, may be required to make a return giving particulars of any transactions effected by or through that auctioneer or that person, as the case may be, in which any asset which is tangible movable property is disposed of for a consideration the amount or value of which, in the hands of the recipient, exceeds—

(*a*) as respects transactions effected on or after the 6th day of April, 1994, but before the 6th day of April, 1995, £5,000, and

(*b*) as respects transactions effected on or after the 6th day of April, 1995, £15,000. PT.38 S.914

(7) No person shall be required under this section to include in a return particulars of any transaction effected more than 3 years before the service of the notice requiring that person to make the return.

Returns by nominee shareholders.

915.—(1) In this section, references to shares include references to securities and loan capital.

[CGTA75 s51(1) and Sch4 par5]

(2) Where, for the purpose of obtaining particulars of chargeable gains, any person in whose name any shares of a company are registered is so required by notice in writing by the Revenue Commissioners or by an inspector, that person shall state whether or not that person is the beneficial owner of those shares and, if that person is not the beneficial owner of those shares or any of them, shall furnish the name and address of the person or persons on whose behalf the shares are registered in that person's name.

Returns by party to a settlement.

916.—The Revenue Commissioners may by notice in writing require any person, being a party to a settlement, to furnish them within such time as they may direct (not being less than 28 days) with such particulars relating to the settlement as they think necessary for the purposes of the Capital Gains Tax Acts.

[CGTA75 s51(1) and Sch4 par6]

Returns relating to non-resident companies and trusts.

917.—A person who—

(*a*) holds shares or securities in a company not resident or ordinarily resident in the State, or

[CGTA75 s51(1) and Sch4 par7]

(*b*) is beneficially interested or acts as agent for or on behalf of a person who is beneficially interested in settled property under a settlement the trustees of which are not resident or ordinarily resident in the State,

may be required by a notice by the Revenue Commissioners to give such particulars as the Revenue Commissioners may consider are required to determine whether the company or trust is within *section 579* or *590*, and whether any chargeable gains have accrued to that company, or to the trustees of that settlement, in respect of which the person to whom the notice is given is liable to capital gains tax under *section 579* or *590*.

PART 39

ASSESSMENTS

CHAPTER 1

Income tax and corporation tax

Making of assessments under Schedules C, D, E and F.

918.—(1) Assessments under Schedules D, E and F, except—

(*a*) such assessments as the Revenue Commissioners are empowered to make under *Chapter 2* of *Part 4*,

[ITA67 s88(1) and s181; F(MP)A68 s2, s3(3) and Sch PtII; CTA76 s140(1) and Sch2 PtI par5]

(*b*) assessments to which *section 853* applies, and

(*c*) such assessments as officers or persons appointed by the Revenue Commissioners are empowered to make under *section 854*,

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shall be made by the inspectors or such other officers as the Revenue Commissioners shall appoint in that behalf.

(2) The inspector shall give due notice to each person assessed of every such assessment made by him or her, the amount of the assessment and the time allowed for giving notice of appeal against the assessment.

(3) Anything required to be done by the Revenue Commissioners in relation to the making of assessments under Schedule C or D may be done by such officer of the Revenue Commissioners as they may authorise in that behalf.

(4) Where for any year of assessment profits or gains chargeable to tax under Case IV of Schedule D by virtue of *section 98*, *99* or *100* arise to any person from 2 or more sources, the several amounts of profits or gains so chargeable may be assessed in one assessment.

Assessments to corporation tax.

[CTA76 s7 and s144; DCITPA96 s6; CABA96 s24(2)]

919.—(1) Assessments to corporation tax shall be made by an inspector.

(2) (*a*) Where a company on whose profits the tax is to be assessed is resident in the State, the tax shall be assessed on the company.

(*b*) Where a company on whose profits the tax is to be assessed is not resident in the State, the tax shall be assessed on the company in the name of any agent, manager, factor or other representative of the company.

(3) The inspector shall give notice to the company assessed or, in the case of a company not resident in the State, to the agent, manager, factor or other representative of the company assessed of every assessment made by the inspector.

(4) (*a*) In this section, ''information'' includes information received from a member of the Garda Síochána.

(*b*) Where—

(i) a company makes default in the delivery of a statement in respect of corporation tax, or

(ii) the inspector is not satisfied with a statement which has been delivered, or has received information as to its insufficiency,

the inspector shall make an assessment on the company concerned in such sum as according to the best of the inspector's judgment ought to be charged on that company.

(5) (*a*) In this subsection, ''neglect'' means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the enactments relating to corporation tax; but a company shall be deemed not to have failed to do anything required to be done within a limited time if the company did it within such further time, if any, as the Revenue Commissioners or officer concerned may have allowed and, where a company had a reasonable excuse for not doing anything

required to be done, the company shall be deemed not to have failed to do it if the company did it without unreasonable delay after the excuse had ceased. PT.39 S.919

(*b*) Where an inspector discovers that—

(i) any profits which ought to have been assessed to corporation tax have not been assessed,

(ii) an assessment to corporation tax is or has become insufficient, or

(iii) any relief which has been given is or has become excessive,

the inspector shall make an assessment in the amount or the further amount which ought in the inspector's opinion to be charged.

(*c*) Subject to *paragraph (d)* and any other provision allowing a longer period in any class of case, no assessment to corporation tax shall be made more than 10 years after the end of the accounting period to which it relates.

(*d*) In a case in which any form of fraud or neglect has been committed by or on behalf of any company in connection with or in relation to corporation tax, an assessment may be made on that company at any time for any accounting period for which by reason of the fraud or neglect corporation tax would otherwise be lost to the Exchequer.

(*e*) An objection to the making of any assessment on the ground that the time limited for the making of the assessment has expired shall be made only on appeal against the assessment.

(6) An assessment on a company's profits for an accounting period which falls after the commencement of the winding up of the company shall not be invalid because made before the end of the accounting period.

Granting of allowances and reliefs.

[ITA67 s182]

920.—(1) Notwithstanding anything in the Income Tax Acts, the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf may at any time grant, in relation to any assessment in respect of income tax chargeable for any year of assessment, any allowance, deduction or relief authorised by the Income Tax Acts.

(2) Whenever such inspector or other officer so grants any such allowance, deduction or relief in relation to an assessment, such assessment shall be deemed to be amended accordingly.

Aggregation of assessments.

[ITA67 s183(1) to (5)(a) and (7); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par6; FA80 s19 and Sch1 PtIII par1; FA97 s146(1) and Sch9 PtI par1(11)]

921.—(1) In this section, ''personal reliefs'' means relief under any of the provisions specified in the Table to *section 458*.

(2) Where 2 or more assessments to income tax are to be made on a person under Schedule D, E or F or under 2 or more of those Schedules, the tax in the assessments may be stated in one sum, and the notice of assessment may be stated correspondingly.

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(3) A notice of appeal in a case in which *subsection (2)* applies shall, to be valid, indicate each assessment appealed against.

(4) Pending the determination of an appeal against any one or more assessments referred to in *subsection (2)*, an amount of tax (being a portion of the one sum referred to in that subsection) shall be payable on the due date or dates and shall be the amount which results when the appropriate personal reliefs are deducted from the assessments not under appeal or allowed from the tax charged in those assessments, as may be appropriate.

(5) The tax stated in one sum under *subsection (2)* or the amount payable under *subsection (4)* shall for the purposes of *sections 1080* and *1081* be deemed to be tax charged by an assessment to income tax.

(6) Where for any of the purposes of the Income Tax Acts other than *subsection (4)* it becomes necessary to determine what amount of the tax charged is applicable to any one of 2 or more assessments referred to in *subsection (2)*, a certificate from the inspector indicating the manner in which the deductions, allowances or reliefs were allocated and stating the separate amounts of tax, if any, and the instalments of tax applicable to any one or more assessments or to each assessment shall be sufficient evidence of the charge to tax in and by each such assessment.

Assessment in absence of return.

[ITA67 s184; FA69 s33(1) and Sch4 PtI; CTA76 s140(1) and Sch2 PtI par7; DCITPA96 s5; CABA96 s24(1)]

922.—(1) In this section, ''information'' includes information received from a member of the Garda Síochána.

(2) Where the inspector does not receive a statement from a person liable to be charged to income tax, the inspector shall to the best of his or her information and judgment, but subject to *section 997*, make an assessment on that person of the amount at which that person ought to be charged under Schedule E.

(3) Where—

(*a*) a person makes default in the delivery of a statement in respect of any income tax under Schedule D or F, or

(*b*) the inspector is not satisfied with a statement which has been delivered, or has received any information as to its insufficiency,

the inspector shall make an assessment on the person concerned in such sum as according to the best of the inspector's judgment ought to be charged on that person.

Function of certain assessors.

[ITA67 s185]

923.—(1) (*a*) A person appointed under *section 855* to be an assessor and a person (in this section also referred to as an ''assessor'') appointed under *section 854* shall on request be furnished free of charge by any officer in the relevant department or office or by any agent by whom the same are payable with true accounts of any salaries, fees, wages, perquisites, profits, pensions or stipends chargeable under Schedule E.

(*b*) Every such assessor shall have access to all documents in his or her department or office which concern any such payments.

(*c*) Every such assessor may, if he or she is dissatisfied with any account referred to in *paragraph (a)* or in any case in which it may be necessary, require from any person to be charged an account of any salary, fees, wages, perquisites, profits, pensions or stipend, within the like period as is limited for the delivery of statements of profits or gains under the Income Tax Acts, and under the like penalty as is provided in the case of failure to deliver such statements.

(2) The assessors shall assess the persons who hold offices, or are entitled to pensions or stipends, in accordance with the annual amount thereof from the documents, accounts and papers in their respective departments.

(3) Every assessment shall set out—

(*a*) the full and just annual emoluments of every office and employment of profit, and the full annual amount of every pension or stipend,

(*b*) the names of the persons entitled to those emoluments, pensions or stipends, and

(*c*) the tax payable in each case.

(4) An assessor who fails to comply with this section shall be liable to a penalty not exceeding £100 and not less than £20.

Additional assessments.

[ITA67 s186; F(MP)A68 s4(1); FA69 s65(1) and Sch5 PtI; CTA76 s140(1) and Sch2 PtI par8; FA96 s132(2) and Sch5 PtII]

924.—(1) (*a*) Where the inspector discovers that—

(i) any properties or profits chargeable to income tax have been omitted from the first assessments,

(ii) a person chargeable—

(I) has not delivered any statement,

(II) has not delivered a full and proper statement,

(III) has not been assessed to income tax, or

(IV) has been undercharged in the first assessments, or

(iii) a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement or relief not authorised by the Income Tax Acts,

then, where the tax is chargeable under Schedule D, E or F, the inspector shall make an additional first assessment.

(*b*) Any additional first assessment made by the inspector in accordance with *paragraph (a)* shall be subject to appeal and other proceedings as in the case of a first assessment.

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(2) (*a*) In this subsection, ''neglect'' means negligence or a failure to give any notice, to make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the Income Tax Acts; but a person shall be deemed not to have failed to do anything required to be done within a limited time if such person did it within such further time, if any, as the Revenue Commissioners or officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, such person shall be deemed not to have failed to do it if such person did it without unreasonable delay after the excuse had ceased.

(*b*) Subject to *paragraph (c)* and any other provision allowing a longer period in any class of case, an assessment or an additional first assessment may be made at any time not later than 10 years after the end of the year to which the assessment relates.

(*c*) In a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to income tax, an assessment or an additional first assessment may be made at any time for any year for which by reason of the fraud or neglect income tax would otherwise be lost to the Exchequer.

(*d*) (i) In a case in which emoluments to which this subparagraph applies are received in a year of assessment subsequent to that for which they are assessable, *paragraph (b)* shall apply in the case of assessments or additional first assessments in respect of the emoluments subject to the substitution of a reference to the end of the year of assessment in which the emoluments were received for the reference to the end of the year to which the assessment relates.

(ii) The emoluments to which *subparagraph (i)* applies are emoluments within the meaning of *section 112(2)*, including any payments chargeable to tax by virtue of *section 123* and any sums which by virtue of *Chapter 3* of *Part 5* are to be treated as perquisites of a person's office or employment, being emoluments, payments or sums other than those taken into account in an assessment to income tax for the year of assessment in which they are received, and for the purposes of this paragraph—

(I) any such payment shall, notwithstanding anything in *section 123(4)*, be treated as having been received at the time it was actually received, and

(II) any such sums which are not actually paid to that person shall be treated as having been received at the time when the relevant expenses were incurred or are treated for the purposes of *Chapter 3* of *Part 5* as having been incurred.

(*e*) An objection to the making of any assessment or additional first assessment on the ground that the time limited for the making of that assessment has expired shall only be made on appeal against the assessment.

(3) Any assessments not made at the time when the first assessments are made shall as soon as they are made be added to the first assessments by means of separate forms of assessment. PT.39 S.924

Special rules relating to assessments under Schedule E.

[ITA67 Sch2 rule1(1) and (2)]

925.—(1) Where at any time, either during the year of assessment or in respect of that year, a person becomes entitled to any additional salary, fees or emoluments over and above the amount for which an assessment to income tax has been made on that person, or for which at the commencement of that year that person was liable to be charged to income tax, an additional assessment shall, as often as the case may require, be made on that person in respect of any such additional salary, fees or emoluments, so that he or she may be charged in respect of the full amount of his or her salary, fees or emoluments for that year.

(2) Where any person proves to the satisfaction of the inspector that the amount for which an assessment to income tax has been made in respect of that person's salary, fees or emoluments for any year of assessment exceeds the amount of the salary, fees or emoluments for that year, the assessment shall be adjusted and any amount overpaid by means of tax shall be repaid.

Estimation of certain amounts.

[ITA67 s528; FA74 s11 and Sch1 PtII]

926.—(1) Where—

(*a*) the total income of any individual from all sources, whether chargeable with income tax by deduction or otherwise, includes income from any source or sources which is to be computed on the basis of the actual amounts receivable in the year of assessment or where any deductions allowable on account of any annual sums paid out of the property or profits of an individual are to be allowed as deductions in respect of the year in which they are payable, and

(*b*) an assessment to income tax is being made before the end of the year of assessment to which such assessment to tax relates,

the inspector in making the assessment shall, in computing the total amount of income assessable to income tax, estimate the amount of income from each such source or the amount of any such allowable deductions and, in making any such estimate, the inspector shall have due regard to any corresponding amount of income or allowable deductions in the year preceding the year of assessment and shall, in computing the income tax payable, estimate the amount of tax to be credited under *sections 59* and *997*.

(2) Where—

(*a*) an estimate has been made under *subsection (1)*,

(*b*) notice of an appeal against the assessment to income tax has not been given, and

(*c*) the person assessed gives to the inspector within a period of one year from the end of the year of assessment particulars of the correct amount of the income or deductions in respect of which the estimate was made,

the inspector shall adjust the assessment by reference to the difference between the correct amount of income assessable to income tax

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and the amount of the assessment, and any amount of income tax overpaid shall be repaid.

Rectification of excessive set-off, etc. of tax credit.

[CTA76 s161]

927.—(1) Where an inspector discovers that any set-off or payment of tax credit ought not to have been made or is or has become excessive, the inspector may make any such assessments as may in his or her judgment be required for recovering any tax that ought to have been paid or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.

(2) This Part, *Part 40* and *Part 42* shall apply to any assessment under this section for recovering a payment of tax credit as if it were an assessment to income tax for the year of assessment, or, in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed and as if that payment represented a loss of tax to the Exchequer, and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

Transmission to Collector-General of particulars of sums to be collected.

[ITA67 s187(1); FA74 s86 and Sch2 PtI; CTA76 s147(1) and(2); FA86 s113(5); FA96 s132(2) and Sch5 PtII]

928.—(1) After assessments to income tax and corporation tax have been made, the inspectors shall transmit particulars of the sums to be collected to the Collector-General for collection.

(2) The entering by an inspector or other authorised officer of details of an assessment to income tax or corporation tax and of the tax charged in such an assessment in an electronic, photographic or other record from which the Collector-General may extract such details by electronic, photographic or other process shall constitute transmission of such details by the inspector or other authorised officer to the Collector-General.

(3) *Subsection (2)* shall apply for the purposes of value-added tax as it applies for the purposes of income tax or corporation tax with the substitution of ''value-added tax'' for ''income tax or corporation tax''.

CHAPTER 2

Provision against double assessment and relief for error or mistake

Double assessment.

[ITA67 s190; F(MP)A68 s3(2) and Sch PtI; CTA76 s147(1) and (2)]

929.—(1) A person who, either on the person's own account or on behalf of another person, has been assessed to income tax or corporation tax, and is by any error or mistake again assessed for the same year of assessment or the same accounting period, as the case may be, for the same cause and on the same account, may apply for relief to the Appeal Commissioners who, on proof to their satisfaction of the double assessment, shall cause the assessment, or so much of the assessment as constitutes a double assessment, to be vacated.

(2) Where it appears to the satisfaction of the Revenue Commissioners that a person has been assessed more than once for the same cause and for the same year of assessment or the same accounting period, as the case may be, they shall direct the whole, or such part, of any assessment as appears to be an overcharge to be vacated, and thereupon the whole, or such part, of the assessment shall be vacated accordingly.

(3) Where it is proved to the satisfaction of the Revenue Commissioners that any such double assessment has been made and that payment has been made on both assessments, they shall order the amount of the overpayment to be repaid to the applicant. PT.39 S.929

Error or mistake.

930.—(1) Where any person who has paid tax charged under an assessment to—

[ITA67 s191(1) to (5); F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; CTA76 s143(12)(a); FA95 s15(a) and (b)]

(*a*) income tax made for any year of assessment, or

(*b*) corporation tax made for any accounting period,

alleges that the assessment was excessive by reason of some error or mistake in the return or statement made by that person for the purposes of the assessment, that person may, at any time not later than 6 years after the end of the year of assessment or the accounting period, as the case may be, within which the assessment was made, make an application in writing to the Revenue Commissioners for relief.

(2) On receiving any such application, the Revenue Commissioners shall inquire into the matter and shall, subject to this section, give by means of repayment such relief in respect of the error or mistake as is just and reasonable; but no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis of, or in accordance with, the practice generally prevailing at the time when the return or statement was made.

(3) In determining any application under this section, the Revenue Commissioners shall have regard to all the relevant circumstances of the case and in particular shall consider whether the granting of relief would result in the exclusion from the charge to income tax or corporation tax, as the case may be, of any part of the profits or income of the applicant, and for this purpose the Revenue Commissioners may take into consideration the liability of the applicant and assessments made on the applicant in respect of other years of assessment or accounting periods, as the case may be.

(4) Any person aggrieved by the determination of the Revenue Commissioners on an application made by that person under this section may, on giving notice in writing to the Revenue Commissioners within 21 days after the notification to that person of their determination, appeal to the Appeal Commissioners.

(5) The Appeal Commissioners shall thereupon hear and determine the appeal in accordance with the principles to be followed by the Revenue Commissioners in determining applications under this section and, subject to those principles, in the like manner as in the case of an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications; but neither the appellant nor the Revenue Commissioners shall be entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income.

CHAPTER 3

Capital gains tax

Making of assessments and application of income tax assessment provisions.

[CGTA75 s51(1) and Sch4 pars 1(2) and 2]

931.—(1) Assessments under the Capital Gains Tax Acts shall be made by inspectors or such other officers as the Revenue Commissioners shall appoint in that behalf.

(2) The provisions of the Income Tax Acts relating to the assessment of income tax shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax chargeable under Schedule D.

(3) In particular and without prejudice to the generality of *subsection (2)*, *subsections (2)* and *(3)* of *section 918* and *sections 920*, *922*, *924* and *928* to *930* shall, subject to any necessary modifications, apply to capital gains tax.

PART 40

APPEALS

CHAPTER 1

Appeals against income tax and corporation tax assessments

Prohibition on alteration of assessment except on appeal.

[ITA67 s415; CTA76 s146(1); FA83 s37]

932.—Except where expressly authorised by the Tax Acts, an assessment to income tax or corporation tax shall not be altered before the time for hearing and determining appeals and then only in cases of assessments appealed against and in accordance with such determination, and if any person makes, causes, or allows to be made in any assessment any unauthorised alteration, that person shall incur a penalty of £50.

Appeals against assessment.

[ITA67 s416(1) to (7)(f), (8) and (9); F(MP)A68 s3(1), s3(2) and Sch PtI; CTA76 s146(1); FA80 s54(1); FA83 s9(a)(i) and s37; FA95 s173(1)(a)]

933.—(1) (*a*) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as ''other officer'') shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

(*b*) Where on an application under *paragraph (a)* the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.

(*c*) A person who has had an application under *paragraph (a)* refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.

(*d*) On receipt of an application under *paragraph (c)*, the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under *paragraph (b)* and, on receipt of the copy of the notice, they shall as soon as possible—

(i) refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal,

(ii) allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or

(iii) notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.

(2) (*a*) The Appeal Commissioners shall from time to time appoint times and places for the hearing of appeals against assessments and the Clerk to the Appeal Commissioners shall give notice of such times and places to the inspector or other officer.

(*b*) The inspector or other officer shall give notice in writing to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal; but—

(i) notice under this paragraph shall not be given in a case in which *subsection (3)(b)* applies either consequent on an agreement referred to in that subsection or consequent on a notice referred to in *subsection (3)(d)*, and

(ii) in a case where it appears to the inspector or other officer that an appeal may be settled by agreement under *subsection (3)*, he or she may refrain from giving notice under this paragraph or may by notice in writing and with the agreement of the appellant withdraw a notice already given.

(*c*) Where, on application in writing in that behalf to the Appeal Commissioners, a person who has given notice of appeal to the inspector or other officer in accordance with *subsection (1)(a)* satisfies the Appeal Commissioners that the information furnished to the inspector or other officer is such that the appeal is likely to be determined on the first occasion on which it comes before them for hearing, the Appeal Commissioners may direct the inspector or other officer to give the notice in writing first mentioned in *paragraph (b)* and the inspector or other officer shall comply forthwith with such direction, and accordingly *subparagraph (ii)* of that paragraph shall not apply to that notice of appeal.

(3) (*a*) This subsection shall apply to any assessment in respect of which notice of appeal has been given, not being an

assessment the appeal against which has been determined by the Appeal Commissioners or which has become final and conclusive under *subsection (6)*.

(*b*) Where, in relation to an assessment to which this subsection applies, the inspector or other officer and the appellant come to an agreement, whether in writing or otherwise, that the assessment is to stand, is to be amended in a particular manner or is to be discharged or cancelled, the inspector or other officer shall give effect to the agreement and thereupon, if the agreement is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(*c*) An agreement which is not in writing shall be deemed not to be an agreement for the purposes of *paragraph (b)* unless—

(i) the fact that an agreement was come to, and the terms agreed on, are confirmed by notice in writing given by the inspector or other officer to the appellant or by the appellant to the inspector or other officer, and

(ii) 21 days have elapsed since the giving of that notice without the person to whom it was given giving notice in writing to the person by whom it was given that the first-mentioned person desires to repudiate or withdraw from the agreement.

(*d*) Where an appellant desires not to proceed with the appeal against an assessment to which this subsection applies and gives notice in writing to that effect to the inspector or other officer, *paragraph (b)* shall apply as if the appellant and the inspector or other officer had, on the appellant's notice being received, come to an agreement in writing that the assessment should stand.

(*e*) References in this subsection to an agreement being come to with an appellant and the giving of notice to or by an appellant include references to an agreement being come to with, and the giving of notice to or by, a person acting on behalf of the appellant in relation to the appeal.

(4) All appeals against assessments to income tax or corporation tax shall be heard and determined by the Appeal Commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that that person's appeal shall be reheard under *section 942* or unless under the Tax Acts a case is required to be stated for the opinion of the High Court.

(5) An appeal against an assessment may be heard and determined by one Appeal Commissioner, and the powers conferred on the Appeal Commissioners by this Part may be exercised by one Appeal Commissioner.

(6) (*a*) In default of notice of appeal by a person to whom notice of assessment has been given, the assessment made on that person shall be final and conclusive.

(*b*) Where a person who has given notice of appeal against an assessment does not attend before the Appeal Commissioners at the time and place appointed for the hearing of that person's appeal, the assessment made on that person shall, subject to *subsection (8)*, have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(*c*) Where on the hearing of an appeal against an assessment—

(i) no application is or has been made to the Appeal Commissioners before or during the hearing of the appeal by or on behalf of the appellant for an adjournment of the proceedings on the appeal or such an application is or has been made and is or was refused, and

(ii) (I) a return of the appellant's income for the relevant year of assessment or, as the case may be, a return under *section 884* has not been made by the appellant, or

(II) such a return has been made but—

(A) all the statements of profits and gains, schedules and other evidence relating to such return have not been furnished by or on behalf of the appellant,

(B) information requested from the appellant by the Appeal Commissioners in the hearing of the appeal has not been supplied by the appellant,

(C) the terms of a precept issued by the Appeal Commissioners under *section 935* have not been complied with by the appellant, or

(D) any questions as to an assessment or assessments put by the Appeal Commissioners under *section 938* have not been answered to their satisfaction,

the Appeal Commissioners shall make an order dismissing the appeal against the assessment and thereupon the assessment shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(*d*) An application for an adjournment of the proceedings on an appeal against an assessment, being an application made before or during the hearing of the appeal, shall not be refused before the expiration of 9 months from the earlier of—

(i) the end of the year of assessment or, as the case may be, accounting period to which the assessment appealed against relates, and

(ii) the date on which the notice of assessment was given to the appellant.

(*e*) *Paragraph (c)* shall not apply if on the hearing of the appeal the Appeal Commissioners are satisfied that sufficient information has been furnished by or on behalf of the appellant to enable them to determine the appeal at that hearing.

(7) (*a*) A notice of appeal not given within the time limited by *subsection (1)* shall be regarded as having been so given where, on an application in writing having been made to the inspector or other officer in that behalf within 12 months after the date of the notice of assessment, the inspector or other officer, being satisfied that owing to absence, sickness or other reasonable cause the applicant was prevented from giving notice of appeal within the time limited and that the application was made thereafter without unreasonable delay, notifies the applicant in writing that the application under this paragraph has been allowed.

(*b*) Where on an application under *paragraph (a)* the inspector or other officer is not so satisfied, he or she shall by notice in writing inform the applicant that the application under this paragraph has been refused.

(*c*) Within 15 days after the date of a notice under *paragraph (b)* the applicant may by notice in writing require the inspector or other officer to refer the application to the Appeal Commissioners and, in relation to any application so referred, *paragraphs (a)* and *(b)* shall apply as if for every reference in those paragraphs to the inspector or other officer there were substituted a reference to the Appeal Commissioners.

(*d*) Notwithstanding *paragraph (a)*, an application made after the expiration of the time specified in that paragraph which but for that expiration would have been allowed under *paragraph (a)* may be allowed under that paragraph if at the time of the application—

(i) there has been made to the inspector or other officer a return of income or, as the case may be, a return under *section 884*, statements of profits and gains and such other information as in the opinion of the inspector or other officer would enable the appeal to be settled by agreement under *subsection (3)*, and

(ii) the income tax or corporation tax charged by the assessment in respect of which the application is made has been paid together with any interest on that tax chargeable under *section 1080*.

(*e*) Where on an application referred to in *paragraph (d)* the inspector or other officer is not satisfied that the information furnished would be sufficient to enable the appeal to be settled by agreement under *subsection (3)* or if the tax and interest mentioned in *paragraph (d)(ii)* have not been paid, the inspector or other officer shall by notice in writing inform the applicant that the application has been refused.

(*f*) Within 15 days after the date of a notice under *paragraph (e)* the applicant may by notice in writing require the inspector or other officer to refer the application to the

Appeal Commissioners and, in relation to an application so referred, if—

(i) the application is one which but for the expiration of the period specified in *paragraph (a)* would have been allowed under *paragraph (c)* if the application had been referred to the Appeal Commissioners under that paragraph,

(ii) at the time the application is referred to the Appeal Commissioners the income tax or corporation tax charged by the assessment in respect of which the application is made, together with any interest on that tax chargeable under *section 1080*, has been paid, and

(iii) the information furnished to the inspector or other officer is such that in the opinion of the Appeal Commissioners the appeal is likely to be determined on the first occasion on which it comes before them for hearing,

the Appeal Commissioners may allow the application.

(8) In a case in which a person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed for the hearing of that person's appeal, *subsection (6)(b)* shall not apply if—

(*a*) at that time and place another person attends on behalf of the appellant and the Appeal Commissioners consent to hear that other person,

(*b*) on an application in that behalf having been made to them in writing or otherwise at or before that time, the Appeal Commissioners postpone the hearing, or

(*c*) on an application in writing having been made to them after that time the Appeal Commissioners, being satisfied that, owing to absence, sickness or other reasonable cause, the appellant was prevented from appearing before them at that time and place and that the application was made without unreasonable delay, direct that the appeal be treated as one the time for the hearing of which has not yet been appointed.

(9) (*a*) Where action for the recovery of income tax or corporation tax charged by an assessment has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962*, neither *subsection (7)* nor *subsection (8)* shall apply in relation to that assessment until that action has been completed.

(*b*) Where, in a case within *paragraph (a)*, an application under *subsection (7)(a)* is allowed or, on an application under *subsection (8)(c)*, the Appeal Commissioners direct as provided in that subsection, the applicant shall in no case be entitled to repayment of any sum paid or borne by the applicant in respect of costs of any such court proceedings or, as the case may be, of any fees or expenses charged by the county registrar or sheriff executing a certificate under *section 962*.

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Procedure on appeals.

[ITA67 s421; FA68 s16; CTA76 s146(1); FA80 s54(2); FA83 s9(a)(ii) and s37; FA90 s28; FA95 s173(1)(b)]

934.—(1) The inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as ''other officer'') may attend every hearing of an appeal, and shall be entitled—

(*a*) to be present during all the hearing and at the determination of the appeal,

(*b*) to produce any lawful evidence in support of the assessment, and

(*c*) to give reasons in support of the assessment.

(2) (*a*) On any appeal, the Appeal Commissioners shall permit any barrister or solicitor to plead before them on behalf of the appellant or the inspector or other officer either orally or in writing and shall hear—

(i) any accountant, being any person who has been admitted a member of an incorporated society of accountants, or

(ii) any person who has been admitted a member of the body incorporated under the Companies Act, 1963, on the 31st day of December, 1975, as ''The Institute of Taxation in Ireland''.

(*b*) Notwithstanding *paragraph (a)*, the Appeal Commissioners may permit any other person representing the appellant to plead before them where they are satisfied that such permission should be given.

(3) Where on an appeal it appears to the Appeal Commissioners by whom the appeal is heard, or to a majority of such Appeal Commissioners, by examination of the appellant on oath or affirmation or by other lawful evidence that the appellant is overcharged by any assessment, the Appeal Commissioners shall abate or reduce the assessment accordingly, but otherwise the Appeal Commissioners shall determine the appeal by ordering that the assessment shall stand.

(4) Where on any appeal it appears to the Appeal Commissioners that the person assessed ought to be charged in an amount exceeding the amount contained in the assessment, they shall charge that person with the excess.

(5) Unless the circumstances of the case otherwise require, where on an appeal against an assessment which assesses an amount which is chargeable to income tax or corporation tax it appears to the Appeal Commissioners—

(*a*) that the appellant is overcharged by the assessment, they may in determining the appeal reduce only the amount which is chargeable to income tax or corporation tax,

(*b*) that the appellant is correctly charged by the assessment, they may in determining the appeal order that the amount which is chargeable to income tax or corporation tax shall stand, and

(*c*) that the appellant ought to be charged in an amount exceeding the amount contained in the assessment, they

may charge the excess by increasing only the amount which is chargeable to income tax or corporation tax.

(6) Where an appeal is determined by the Appeal Commissioners, the inspector or other officer shall give effect to the Appeal Commissioners' determination and thereupon, if the determination is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

(7) Every determination of an appeal by the Appeal Commissioners shall be recorded by them in the prescribed form at the time the determination is made and the Appeal Commissioners shall within 10 days after the determination transmit that form to the inspector or other officer.

Power to issue precepts.

[ITA67 s422; F(MP)A68 s3(1), s3(2) and Sch PtI; CTA76 s146(1); FA83 s37; FA95 s173(1)(b)]

935.—(1) Where notice of appeal has been given against an assessment, the Appeal Commissioners may, whenever it appears to them to be necessary for the purposes of the Tax Acts, issue a precept to the appellant ordering the appellant to deliver to them, within the time limited by the precept, a schedule containing such particulars for their information as they may demand under the authority of the Tax Acts in relation to—

(*a*) the property of the appellant,

(*b*) the trade, profession or employment carried on or exercised by the appellant,

(*c*) the amount of the appellant's profits or gains, distinguishing the particular amounts derived from each separate source, or

(*d*) any deductions made in determining the appellant's profits or gains.

(2) The Appeal Commissioners may issue further precepts whenever they consider it necessary for the purposes of the Tax Acts, until complete particulars have been furnished to their satisfaction.

(3) A precept may be issued by one Appeal Commissioner.

(4) A person to whom a precept is issued shall deliver the schedule required within the time limited by the precept.

(5) Any inspector or such other officer as the Revenue Commissioners shall authorise in that behalf may at all reasonable times inspect and take copies of or extracts from any such schedule.

Objection by inspector or other officer to schedules.

[ITA67 s423; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA95 s173(1)(b)]

936.—(1) The inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as ''other officer'') may, within a reasonable time to be allowed by the Appeal Commissioners after examination by the inspector or other officer of any schedule referred to in *section 935*, object to that schedule or any part of that schedule, and in that case shall state in writing the cause of his or her objection according to the best of his or her knowledge or information.

(2) In every such case the inspector or other officer shall give notice in writing of his or her objection to the person chargeable in

order that that person may, if that person thinks fit, appeal against the objection.

(3) A notice under *subsection (2)* shall be under cover and sealed, and addressed to the person chargeable.

(4) No assessment shall be confirmed or altered until any appeal against the objection has been heard and determined.

Confirmation and amendment of assessments.

[ITA67 s424; F(MP)A68 s3(2) and Sch PtI; CTA76 s 146(1); FA95 s173(1)(b)]

937.—Where—

(*a*) the Appeal Commissioners see cause to disallow an objection to a schedule by the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf, or

(*b*) on the hearing of an appeal, the Appeal Commissioners are satisfied with the assessment, or if, after the delivery of a schedule, they are satisfied with the schedule and have received no information as to its insufficiency,

they shall confirm or alter the assessment in accordance with the schedule, as the case may require.

Questions as to assessments or schedules.

[ITA67 s425; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1)]

938.—(1) Whenever the Appeal Commissioners are dissatisfied with a schedule or require further information relating to a schedule, they may at any time and from time to time by precept put any questions in writing concerning the schedule, or any matter which is contained or ought to be contained in the schedule, or concerning any deductions made in arriving at the profits or gains, and the particulars thereof, and may require true and particular answers in writing signed by the person chargeable to be given within 7 days after the service of the precept.

(2) The person chargeable shall within the time limited either answer any such questions in writing signed by that person, or shall present himself or herself to be examined orally before the Appeal Commissioners, and may object to and refuse to answer any question; but the substance of any answer given by that person orally shall be taken down in writing in that person's presence and be read over to that person and, after that person has had liberty to amend any such answer, he or she may be required to verify the answer on oath to be administered to him or her by any one of the Appeal Commissioners, and the oath shall be subscribed by the person by whom it is made.

(3) Where any clerk, agent or servant of the person chargeable presents himself or herself on behalf of that person to be examined orally before the Appeal Commissioners, the same provisions shall apply to his or her examination as in the case of the person chargeable who presents himself or herself to be examined orally.

Summoning and examination of witnesses.

[ITA67 s426; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA82 s60(2)(c); FA92 s248]

939.—(1) (*a*) The Appeal Commissioners may summon any person whom they think able to give evidence as respects an assessment made on another person to appear before them to be examined, and may examine such person on oath.

(*b*) The clerk, agent, servant or other person confidentially employed in the affairs of a person chargeable

shall be examined in the same manner, and subject to the same restrictions, as in the case of a person chargeable who presents himself or herself to be examined orally.

(2) The oath shall be that the evidence to be given, touching the matter in question, by the person sworn shall be the truth, the whole truth and nothing but the truth, and the oath shall be subscribed by the person by whom it is made.

(3) A person who after being duly summoned—

(*a*) neglects or refuses to appear before the Appeal Commissioners at the time and place appointed for that purpose,

(*b*) appears but refuses to be sworn or to subscribe the oath, or

(*c*) refuses to answer any lawful question touching the matters under consideration,

shall be liable to a penalty of £750; but the penalty imposed in respect of any offence under *paragraph (b)* or *(c)* shall not apply to any clerk, agent, servant or other person referred to in *subsection (1)(b)*.

Determination of liability in cases of default.

[ITA67 s427; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA95 s173(1)(b)]

940.—Where—

(*a*) a person has neglected or refused to deliver a schedule in accordance with a precept of the Appeal Commissioners,

(*b*) any clerk, agent or servant of, or any person confidentially employed by, a person chargeable, having been summoned, has neglected or refused to appear before the Appeal Commissioners to be examined,

(*c*) the person chargeable or that person's clerk, agent or servant or any person confidentially employed by the person chargeable has declined to answer any question put to him or her by the Appeal Commissioners,

(*d*) an objection has been made to a schedule and the objection has not been appealed against, or

(*e*) the Appeal Commissioners decide to allow any objection made by the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf,

the Appeal Commissioners shall ascertain and settle according to the best of their judgment the sum in which the person chargeable ought to be charged.

Statement of case for High Court.

[ITA67 s428; F(MP)A68 s3(2) and Sch PtI; FA71 s19(2); CTA76 s146(1); FA83 s9(a)(iii) and s37; FA95 s173(1)(c)]

941.—(1) Immediately after the determination of an appeal by the Appeal Commissioners, the appellant or the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as ''other officer''), if dissatisfied with the determination as being erroneous in point of law, may declare his or her dissatisfaction to the Appeal Commissioners who heard the appeal.

(2) The appellant or inspector or other officer, as the case may be, having declared his or her dissatisfaction, may within 21 days

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after the determination by notice in writing addressed to the Clerk to the Appeal Commissioners require the Appeal Commissioners to state and sign a case for the opinion of the High Court on the determination.

(3) The party requiring the case shall pay to the Clerk to the Appeal Commissioners a fee of £20 for and in respect of the case before that party is entitled to have the case stated.

(4) The case shall set forth the facts and the determination of the Appeal Commissioners, and the party requiring it shall transmit the case when stated and signed to the High Court within 7 days after receiving it.

(5) At or before the time when the party requiring the case transmits it to the High Court, that party shall send notice in writing of the fact that the case has been stated on that party's application, together with a copy of the case, to the other party.

(6) The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Appeal Commissioners with the opinion of the Court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit.

(7) The High Court may cause the case to be sent back for amendment and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) An appeal shall lie from the decision of the High Court to the Supreme Court.

(9) Notwithstanding that a case has been required to be stated or is pending, income tax or, as the case may be, corporation tax shall be paid in accordance with the determination of the Appeal Commissioners; but if the amount of the assessment is altered by the order or judgment of the Supreme Court or the High Court, then—

(*a*) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as the Court may allow, or

(*b*) if too little tax has been paid, the amount unpaid shall be deemed to be arrears of tax (except in so far as any penalty is incurred on account of arrears) and shall be paid and recovered accordingly.

Appeals to Circuit Court.

[ITA67 s416(10) and s429; F(MP)A68 s3(1), s3(2) and Sch PtI; FA71 s19(1); FA74 s69; CTA76 s146(1); FA83 s9(a)(iv) and (b)(i) and s37; FA95 s173(1)(d); FA97 s146(1) and Sch9 PtI par1(27)]

942.—(1) Any person aggrieved by the determination of the Appeal Commissioners in any appeal against an assessment made on that person may, on giving notice in writing to the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as ''other officer'') within 10 days after such determination, require that the appeal shall be reheard by the judge of the Circuit Court (in this section referred to as ''the judge'') in whose circuit is situate, in the case of—

(*a*) a person who is not resident in the State,

(*b*) the estate of a deceased person,

(*c*) an incapacitated person, or

(*d*) a trust,

the place where the assessment was made and, in any other case, the place to which the notice of assessment was addressed, and the Appeal Commissioners shall transmit to the judge any statement or schedule in their possession which was delivered to them for the purposes of the appeal.

(2) At or before the time of the rehearing of the appeal by the judge, the inspector or other officer shall transmit to the judge the prescribed form in which the Appeal Commissioners' determination of the appeal is recorded.

(3) The judge shall with all convenient speed rehear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all consequent matters, as the Appeal Commissioners might have and exercise, and the judge's determination shall, subject to *section 943*, be final and conclusive.

(4) *Section 934(2)* shall, with any necessary modifications, apply in relation to a rehearing of an appeal by a judge of the Circuit Court as it applies in relation to the hearing of an appeal by the Appeal Commissioners.

(5) The judge shall make a declaration in the form of the declaration required to be made by an Appeal Commissioner as set out in *Part 1* of *Schedule 27*.

(6) (*a*) Notwithstanding that a person has under *subsection (1)* required an appeal to the Appeal Commissioners against the assessment to be reheard by a judge of the Circuit Court, income tax or, as the case may be, corporation tax shall be paid in accordance with the determination of the Appeal Commissioners.

(*b*) Notwithstanding *paragraph (a)*, where the amount of tax is altered by the determination of the judge or by giving effect to an agreement under *subsection (8)*, then, if too much tax has been paid, the amount or amounts overpaid shall be repaid and (except where the interest amounts to less than £10) in so far as the amount to be repaid represents tax paid in accordance with this subsection it shall be repaid with interest at the rate of 0.6 per cent, or such other rate (if any) prescribed by the Minister for Finance by regulations, for each month or part of a month from the date or dates of payment of the amount or amounts giving rise to the overpayment to the date on which the repayment is made.

(7) Income tax shall not be deductible on payment of interest referred to in *subsection (6)(b)* and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) Where following an application for the rehearing of an appeal by a judge of the Circuit Court in accordance with *subsection (1)* there is an agreement within the meaning of *paragraphs (b)*, *(c)* and *(e)* of *section 933(3)* between the inspector or other officer and the appellant in relation to the assessment, the inspector shall give effect to the agreement and, if the agreement is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.

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(9) Every rehearing of an appeal by the Circuit Court under this section shall be held in camera.

(10) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Extension of *section 941*.

[ITA67 s430; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA83 s9(a)(v) and s37]

943.—(1) *Section 941* shall, subject to this section, apply to a determination given by a judge pursuant to *section 942* in the like manner as it applies to a determination by the Appeal Commissioners, and any case stated by a judge pursuant to *section 941* shall set out the facts, the determination of the Appeal Commissioners and the determination of the judge.

(2) The notice in writing required under *section 941(2)* to be addressed to the Clerk to the Appeal Commissioners shall, in every case in which a judge is under the authority of this section required by any person to state and sign a case for the opinion of the High Court on the determination, be addressed by such person to the county registrar.

(3) The fee required under *section 941(3)* to be paid to the Clerk to the Appeal Commissioners shall in any case referred to in *subsection (2)* be paid to the county registrar.

Communication of decision of Appeal Commissioners.

[ITA67 s431; F(MP)A68 s3(2) and Sch PtI; CTA76 s146(1); FA83 s37]

944.—(1) Where the Appeal Commissioners have entertained an appeal against an assessment for any year of assessment or any accounting period and, after hearing argument on the appeal, have postponed giving their determination either for the purpose of considering the argument or for the purpose of affording to the appellant an opportunity of submitting in writing further evidence or argument, the Appeal Commissioners may, unless they consider a further hearing to be necessary, cause their determination to be sent by post to the parties to the appeal.

(2) Where the determination of an appeal by the Appeal Commissioners is sent to the parties by post under this section, a declaration of dissatisfaction under *section 941(1)* or a notice requiring a rehearing under *section 942(1)* may be made or given in writing within 12 days after the day on which the determination is so sent to the person making the declaration or giving the notice.

CHAPTER 2

Appeals against capital gains tax assessments

Appeals against assessments.

[CGTA75 s51(1) and Sch4 par8; CGT(A)A78 s17 and Sch2; FA83 s55]

945.—(1) A person aggrieved by any assessment under the Capital Gains Tax Acts made on the person by the inspector or other officer mentioned in *section 931(1)* shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer, and in default of notice of appeal by a person to whom notice of assessment has been given the assessment made on such person shall be final and conclusive.

(2) The provisions of the Income Tax Acts relating to—

(*a*) the appointment of times and places for the hearing of appeals,

(*b*) the giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal,

(*c*) the determination of an appeal by agreement between the appellant or the appellant's agent and an inspector of taxes or other officer mentioned in *section 931(1)*,

(*d*) the determination of an appeal by the appellant giving notice of the appellant's intention not to proceed with the appeal,

(*e*) the hearing, determination or dismissal of an appeal by the Appeal Commissioners, including the hearing, determination or dismissal of an appeal by one Appeal Commissioner,

(*f*) the assessment having the same force and effect as if it were an assessment in respect of which no notice of appeal had been given where the person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed,

(*g*) the extension of the time for giving notice of appeal and the readmission of appeals by the Appeal Commissioners and the provisions which apply where action by means of court proceedings has been taken,

(*h*) the rehearing of an appeal by a judge of the Circuit Court and the statement of a case for the opinion of the High Court on a point of law,

(*i*) the payment of tax in accordance with the determination of the Appeal Commissioners notwithstanding that an appeal is required to be reheard by a judge of the Circuit Court or that a case for the opinion of the High Court on a point of law has been required to be stated or is pending, and

(*j*) the procedures for appeal,

shall, with any necessary modifications, apply to an appeal under any provision of the Capital Gains Tax Acts providing for an appeal to the Appeal Commissioners as if the appeal were an appeal against an assessment to income tax.

Regulations with respect to appeals.

[CGTA75 s51(1) and Sch4 par9]

946.—(1) The Revenue Commissioners may make regulations—

(*a*) for the conduct of appeals against assessments and decisions on claims under the Capital Gains Tax Acts;

(*b*) entitling persons, in addition to those who would be so entitled apart from the regulations, to appear on such appeals;

(*c*) regulating the time within which such appeals or claims may be brought or made;

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(*d*) where the market value of an asset on a particular date or an apportionment or any other matter may affect the liability to capital gains tax of 2 or more persons, enabling any such person to have the matter determined by the tribunal having jurisdiction to determine that matter if arising on an appeal against an assessment, and prescribing a procedure by which the matter is not determined differently on different occasions;

(*e*) authorising an inspector or other officer of the Revenue Commissioners, notwithstanding the obligation as to secrecy imposed by the Income Tax Acts or any other Act, to disclose—

(i) to a person entitled to appear on such an appeal, the market value of an asset as determined by an assessment or decision on a claim, or

(ii) to a person whose liability to tax may be affected by the determination of the market value of an asset on a particular date or an apportionment or any other matter, any decision on the matter made by an inspector or other officer of the Revenue Commissioners.

(2) Regulations under this section may contain such supplemental and incidental provisions as appear to the Revenue Commissioners to be necessary.

(3) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

CHAPTER 3

Miscellaneous

Appeals against determination under *sections 98* to *100*.

[FA75 s21(1) to (7); CTA76 s147(1) and (2)]

947.—(1) Where it appears to the inspector that the determination of any amount on which a person may be chargeable to income tax or corporation tax by virtue of *section 98*, *99* or *100* may affect the liability to income tax or corporation tax of other persons, the inspector shall give notice in writing to those persons as well as to the first-mentioned person of the determination the inspector proposes to make and of the rights conferred on them by this section.

(2) Any person to whom such a notice is given may within 21 days after the date on which it is given object to the proposed determination by notice in writing given to the inspector, and *section 933(7)* shall apply, with any necessary modifications, in relation to any such notice as it applies in relation to a notice of appeal under *section 933*.

(3) (*a*) Subject to *paragraph (b)*, where notices have been given under *subsection (1)* and no notice of objection is duly given under *subsection (2)*, the inspector shall make the determination as proposed in his or her notices and the determination shall not be called in question in any proceedings.

(*b*) This subsection shall not operate to prevent any person to whom notice has not been given under *subsection (1)* from appealing against any such determination of the inspector which may affect that person's liability to income tax or corporation tax, as the case may be.

(4) Where a notice of objection is duly given, the amount mentioned in *subsection (1)* shall be determined in the like manner as an appeal and shall be so determined by the Appeal Commissioners.

(5) All persons to whom notices have been given under *subsection (1)* may take part in any proceedings under *subsection (4)* and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings, and their successors in title shall also be so bound.

(6) A notice under *subsection (1)* may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.

(7) An inspector may by notice in writing require any person to give, within 21 days after the date of the notice or within such longer period as the inspector may allow, such information as appears to the inspector to be required for deciding whether to give a notice under *subsection (1)* to any person.

Appeals against amount of income tax deducted under Schedule E.

948.—(1) Any person charged to income tax under Schedule E may appeal to the Appeal Commissioners against the amount of tax deducted from that person's emoluments for any year.

[ITA67 s113; F(MP)A68 s3(2) and Sch PtI]

(2) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (1)* as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

Appeals against determinations of certain claims, etc.

949.—(1) Any person aggrieved by any determination by the Revenue Commissioners, or such officer of the Revenue Commissioners (including an inspector) as they may have authorised in that behalf, on any claim, matter or question referred to in *section 864* may, subject to *section 957* and on giving notice in writing to the Revenue Commissioners or the officer within 30 days after notification to the person aggrieved of the determination, appeal to the Appeal Commissioners.

[ITA67 s432(1) (part only) and (2) to (4); F(MP)A68 s3(2) and Sch PtI; CGTA75 s51(1) and Sch4 par2; CTA76 s146(1) and s164 and Sch3 PtI; FA83 s37]

(2) The Appeal Commissioners shall hear and determine an appeal to them under *subsection (1)* as if it were an appeal against an assessment to income tax and the provisions of *section 933* with respect to such appeals, together with the provisions of the Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law, shall apply accordingly with any necessary modifications.

(3) Where—

(*a*) a right of appeal to the Appeal Commissioners is given by any provision of the Tax Acts or the Capital Gains Tax Acts other than *section 1037*, and

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(*b*) such provision, while applying the provisions of the Tax Acts relating to appeals against assessments, does not apply the provisions of those Acts relating to the rehearing of appeals,

such provision shall be deemed to apply those provisions relating to the rehearing of appeals.

(4) In a case in which—

(*a*) a notice of appeal is not given within the time limited by *subsection (1)*, or

(*b*) a person who has given notice of appeal does not attend before the Appeal Commissioners at the time and place appointed for the hearing of the person's appeal,

subsections (5) and *(7)* to *(9)* of *section 933* shall apply with any necessary modifications.

PART 41

Self Assessment

Interpretation (*Part 41*).

[FA88 s9(1) to (3); FA90 s23(3)(a); FA91 s45(a)(i) to (v) and (vii) to (viii); FA92 s244]

950.—(1) In this Part, except where the context otherwise requires—

''appeal'' means an appeal under *section 933* or, as respects capital gains tax, an appeal under *section 945*;

''appropriate inspector'', in relation to a chargeable person, means—

(*a*) the inspector who has last given notice in writing to the chargeable person that he or she is the inspector to whom the chargeable person is required to deliver a return or statement of income or profits or chargeable gains,

(*b*) in the absence of an inspector referred to in *paragraph (a)*, the inspector to whom it is customary for the chargeable person to deliver such return or statement, or

(*c*) in the absence of an inspector referred to in *paragraphs (a)* and *(b)*, the inspector of returns;

''assessment'' means an assessment to tax made under the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Acts, as the case may be;

''chargeable gain'' has the same meaning as in *section 545(3)*;

''chargeable period'' has the same meaning as in *section 321(2)*;

''chargeable person'' means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person—

(*a*) whose total income for the chargeable period consists solely of emoluments to which *Chapter 4* of *Part 42* applies, and for this purpose a person whose total income for the chargeable period, other than emoluments to which that

Chapter applies, is deducted in determining the amount of his or her tax-free allowances for the chargeable period by virtue of regulation 10(1)(*b*) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be deemed for that chargeable period to be a person whose total income consists solely of emoluments to which that Chapter applies,

(*b*) who for the chargeable period has been exempted by an inspector from the requirements of *section 951* by reason of a notice given under *subsection (6)* of that section, or

(*c*) who is chargeable to tax for the chargeable period by reason only of *section 237*, *238* or *239*,

but *paragraph (a)* shall not apply to a person who is a director or, in the case of a person to whom *section 1017* applies, whose spouse is a director (within the meaning of *section 116*) of a body corporate other than a body corporate which during a period of 3 years ending on the 5th day of April in the chargeable period—

(i) was not entitled to any assets other than cash on hands, or a sum of money on deposit within the meaning of *section 895*, not exceeding £100,

(ii) did not carry on a trade, business or other activity including the making of investments, and

(iii) did not pay charges on income within the meaning of *section 243*;

''determination of the appeal'' means a determination by the Appeal Commissioners under *section 933(4)*, and includes an agreement referred to in *section 933(3)* and an assessment becoming final and conclusive by virtue of *section 933(6)*;

''due date for the payment of an amount of preliminary tax'' has the meaning assigned to it by *section 958(2)*;

''inspector'', in relation to any matter, includes such other officer as the Revenue Commissioners shall appoint in that behalf;

''inspector of returns'' means the inspector nominated by the Revenue Commissioners under *section 951(11)* to be the inspector of returns;

''precedent partner'' has the same meaning as in *Part 43*;

''prescribed form'' means a form prescribed by the Revenue Commissioners or a form used under the authority of the Revenue Commissioners, and includes a form which involves the delivery of a return by any electronic, photographic or other process approved of by the Revenue Commissioners;

''preliminary tax'' means the amount of tax which a chargeable person is required to pay in accordance with *section 952*;

''specified provisions'' means *sections 877* to *881* and *884*, *paragraphs (a)* and *(d)* of *section 888(1)*, and *section 1023*;

''specified return date for the chargeable period'', in relation to a chargeable period, means—

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(*a*) where the chargeable period is a year of assessment, the 31st day of January in the year of assessment following that year,

(*b*) where the chargeable period is an accounting period of a company and subject to *paragraph (c)*, the last day of the period of 9 months commencing on the day immediately following the end of the accounting period, and

(*c*) where the chargeable period is an accounting period of a company which ends on or before the date of commencement of the winding up of the company and the specified return date in respect of that accounting period would but for this paragraph fall on a date after the date of commencement of the winding up but not within a period of 3 months after that date, the date which falls 3 months after the date of commencement of the winding up;

''tax'' means income tax, corporation tax or capital gains tax, as the case may be.

(2) Except in so far as otherwise expressly provided, this Part shall apply notwithstanding any other provision of the Tax Acts or the Capital Gains Tax Acts.

(3) (*a*) Where any obligation or requirement is imposed on a person in any capacity under this Part and a corresponding obligation or requirement is imposed on that person in another capacity, the discharge of any one of those obligations or requirements shall not release the person from the other obligation or requirement.

(*b*) A person shall not in any capacity have an obligation or requirement imposed on that person under this Part by reason only that such obligation or requirement is imposed on that person in any other capacity.

(*c*) Where but for any of the subsequent provisions of this Part any such obligation or requirement would have been imposed on a person in more than one capacity, a release from such obligation or requirement under any of those provisions by reason of any fact or circumstance applying in relation to that person's liability to tax in any one capacity shall not release that person from such obligation or requirement as is imposed on that person in a capacity other than that in which that fact or circumstance applies.

Obligation to make a return.

[FA88 s10; FA90 s23(3)(b); FA91 s46]

951.—(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return in the prescribed form of—

(*a*) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment—

(i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under *section 877*, if the period specified in such notice were the year of assessment which is the chargeable period, and

(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in *subparagraph (i)*, all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under *section 879*, or

(*b*) in the case of a chargeable person who is chargeable to corporation tax for a chargeable period which is an accounting period, all such matters and particulars in relation to the chargeable period as would be required to be contained in a return delivered pursuant to a notice given to the chargeable person by the appropriate inspector under *section 884*,

and such further particulars as may be required by the prescribed form.

(2) The precedent partner of any partnership shall be deemed to be a chargeable person for the purposes of this section and shall as respects any chargeable period deliver to the appropriate inspector on or before the specified return date for that chargeable period the return which that partner would be required to deliver for that period under *section 880*, if the inspector had given notice under that section before that specified date.

(3) (*a*) Where under *subsection (1)* or *(2)* a person delivers a return to an inspector, the person shall be deemed to have been required by a notice under *section 877* to deliver a statement containing the matters and particulars contained in the return or to have been required by a notice under *section 879*, *880* or *884* to deliver the return, as the case may be.

(*b*) Any provision of the Tax Acts relating to the taking of any action on the failure of a person to deliver a statement or return pursuant to a notice given under any of the sections referred to in *paragraph (a)* shall apply to a chargeable person in a case where such a notice has not been given as if the chargeable person had been given a notice on the specified return date for the chargeable period under such one or more of those sections as is appropriate to the provision in question.

(4) A chargeable person shall prepare and deliver to the appropriate inspector a return for a chargeable period as required by this section notwithstanding that the chargeable person has not received a notice from an inspector to prepare and deliver a statement or return for that period under any of the sections referred to in *subsection (3)(a)*.

(5) (*a*) A return required by this section may be prepared and delivered by the chargeable person or by another person acting under the chargeable person's authority in that regard.

(*b*) Where a return is prepared and delivered by such other person, the Tax Acts shall apply as if it had been prepared and delivered by the chargeable person.

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(*c*) A return purporting to be prepared and delivered by or on behalf of any chargeable person shall for the purposes of the Tax Acts be deemed to have been prepared and delivered by that person or by that person's authority, as the case may be, unless the contrary is proved.

(6) An inspector may exclude a person from the application of this section by giving the person a notice in writing stating that the person is excluded from the application of this section, and the notice shall have effect for such chargeable period or periods or until such chargeable period or until the happening of such event as shall be specified in the notice; but—

(*a*) where before the 25th day of May, 1988, a person has been given notice by the inspector that the person need not prepare and deliver a return for or until a specified chargeable period or until the happening of any event, the person shall be deemed to have been given notice to that effect under this subsection;

(*b*) where a person who has been given a notice under this subsection is chargeable to capital gains tax for any chargeable period, this subsection shall not operate so as to remove the person's obligation under *subsection (1)* to make a return of the person's chargeable gains for that chargeable period.

(7) (*a*) This section shall not affect the giving of a notice by an inspector under any of the specified provisions and shall not remove from any person any obligation or requirement imposed on the person by such a notice.

(*b*) The giving of a notice under any of the specified provisions to a person shall not remove from that person any obligation to prepare and deliver a return under this section.

(8) In a case to which *section 1023(5)* applies, a return containing for both the husband and the wife the matters and particulars required by *subsection (1)* shall, if delivered by one spouse, satisfy the obligation of the other spouse under this section.

(9) Nothing in the specified provisions or in a notice given under any of those provisions shall operate so as to require a chargeable person to deliver a return for a chargeable period on a date earlier than the specified return date for the chargeable period.

(10) A certificate signed by an inspector which certifies that he or she has examined the relevant records and that it appears from those records—

(*a*) that as respects a chargeable period a named person is a chargeable person, and

(*b*) that on or before the specified return date for the chargeable period a return in the prescribed form was not received from that chargeable person,

shall be evidence until the contrary is proved that the person so named is a chargeable person as respects that chargeable period and that that person did not on or before the specified return date deliver that return, and a certificate certifying as provided by this subsection and purporting to be signed by an inspector may be tendered in

evidence without proof and shall be deemed until the contrary is proved to have been signed by that inspector. PT.41 S.951

(11) (*a*) The Revenue Commissioners may nominate an inspector to be the inspector of returns for the purposes of this Part.

(*b*) The inspector of returns shall take delivery of returns under this section which he or she has directed to be delivered to him or her and of returns from persons in relation to whom he or she is the appropriate inspector in the circumstances specified in *paragraph (c)* of the definition of ''appropriate inspector'' in *section 950(1)*.

(*c*) The name of an inspector nominated under *paragraph (a)* and the address to which returns being delivered to him or her shall be directed shall be published annually in Iris Oifigiúil.

(12) *Sections 1052* and *1054* shall apply to a failure by a chargeable person to deliver a return in accordance with *subsections (1)* and *(2)* as they apply to a failure to deliver a return referred to in *section 1052*.

Obligation to pay preliminary tax.

[FA 88 s11]

952.—(1) Every person who is a chargeable person as respects any chargeable period shall be liable to pay to the Collector-General in accordance with this section and *section 958* the amount of that person's preliminary tax appropriate to that chargeable period.

(2) The amount of a chargeable person's preliminary tax appropriate to a chargeable period shall be the amount of tax which in the opinion of the chargeable person is likely to become payable by that person for the chargeable period by reason of an assessment or assessments for the chargeable period made or to be made by the inspector or which would be made by the inspector if the inspector did not elect under *section 954(4)* not to make an assessment.

(3) Preliminary tax shall be payable notwithstanding that the inspector has not given notice in respect of that tax under *section 953*.

(4) Where on or before the due date for the payment of an amount of preliminary tax appropriate to a chargeable period the chargeable person by whom the tax is payable has received notice of an assessment for the period, the chargeable person shall not be liable to pay preliminary tax for that chargeable period.

(5) Any amount of preliminary tax appropriate to a chargeable period which is paid by and not repaid to a chargeable person in any capacity shall, to the extent of the amount of that payment or the extent of the amount of that payment less any amount that has been repaid, be treated as a payment on foot of the tax payable by the chargeable person for the chargeable period, being tax which is specified in an assessment or assessments made or to be made for that period on the chargeable person in that capacity.

Notices of preliminary tax.

[FA88 s12; FA91 s47; FA97 s146(1) and Sch9 PtI par15]

953.—(1) Where—

(*a*) a chargeable person defaults in the making of a payment of preliminary tax for a chargeable period, or

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(*b*) at any time before the due date for the payment of an amount of preliminary tax for a chargeable period the inspector considers it appropriate to do so,

the inspector may give notice in writing to the chargeable person of the amount of the preliminary tax which in the opinion of the inspector ought to be paid by the chargeable person for that chargeable period; but a notice shall not be given under this subsection to a chargeable person for a chargeable period at any time after the chargeable person has delivered a return for that chargeable period.

(2) Subject to this section, an amount of preliminary tax specified in a notice under *subsection (1)* shall be due and payable to the Collector-General by the chargeable person on the due date for the payment of an amount of preliminary tax for the chargeable period to which the notice relates.

(3) Subject to *subsection (4)*, where on or before the specified return date for a chargeable period the chargeable person—

(*a*) makes a payment of preliminary tax for the chargeable period under *section 952*, or

(*b*) gives notice in writing to the Collector-General that the chargeable person considers that the chargeable person will not have a liability to pay tax for the chargeable period by reason of any assessment or assessments made or to be made by the inspector,

then, the amount of preliminary tax for the chargeable period specified in a notice given to the chargeable person under *subsection (1)*, or the excess (if any) of that amount over the preliminary tax paid by the chargeable person for the chargeable period, shall not be payable.

(4) Where—

(*a*) the chargeable person defaults in delivering a return for a chargeable period to which a notice of preliminary tax under *subsection (1)* relates, and

(*b*) the amount of preliminary tax specified in the notice as increased under *section 1084* is greater than the amount (if any) of the preliminary tax paid by the chargeable person under *section 952* as increased under *section 1084*,

then—

(i) with effect from the specified return date for the chargeable period, *subsection (3)* shall not apply to that chargeable person for the chargeable period, and

(ii) the amount of preliminary tax specified in the notice, as increased under *section 1084* but reduced by any preliminary tax paid by the chargeable person in the capacity to which the notice relates for the chargeable period, shall become due and payable in all respects as if *subsection (3)* had not been enacted.

(5) (*a*) Notwithstanding *subsections (1)* to *(4)* but subject to *paragraph (b)*, an amount of preliminary tax, or any excess of that amount over the amount (if any) of the preliminary

tax paid by the chargeable person for the chargeable period to which the notice relates, specified in a notice given under *subsection (1)* shall cease to be due and payable as on and from the date on which the inspector makes an assessment on the chargeable person for that chargeable period.

(*b*) Where action for the recovery of an amount of preliminary tax specified in a notice given under *subsection (1)* has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962*, this subsection shall not apply to that amount of preliminary tax.

(6) (*a*) Subject to *subsections (1)* to *(5)*, the amount of preliminary tax specified in a notice given under *subsection (1)* shall be collected and paid in all respects as if it were tax charged by an assessment in respect of which no appeal was pending.

(*b*) *Section 870* shall apply to preliminary tax specified in a notice as it applies to tax specified in an assessment.

(*c*) *Sections 928(2)* and *967* shall apply in all respects to an amount of preliminary tax specified in a notice under *subsection (1*) as if it were an amount of tax specified in an assessment.

(7) Where the amount of preliminary tax paid by a chargeable person for any chargeable period exceeds that person's tax liability for that period, the excess shall be repaid and the amount repaid shall carry interest at the rate of 0.6 per cent, or such other rate (if any) prescribed by the Minister for Finance by regulations, for each month or part of a month for the period from the date or dates of the payment of the amount or amounts giving rise to the overpayment, as the case may require, to the date on which the repayment is made; but—

(*a*) interest shall not be payable under this subsection—

(i) if it amounts to less than £10, or

(ii) to the extent that the excess arises from relief provided for by *section 438(4)*,

and

(*b*) income tax shall not be deductible on payment of interest under this subsection and such interest shall not be reckoned in computing income for the purposes of the Tax Acts.

(8) Where for a chargeable period a notice of preliminary tax has been given to a person by the inspector and the inspector is satisfied that—

(*a*) the person, being a chargeable person, has discharged all that person's tax liability for the chargeable period,

(*b*) the person is not a chargeable person as respects that chargeable period, or

(*c*) it is appropriate to do so,

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the inspector may reduce the amount of preliminary tax specified in the notice given to the person to such amount (including nil) as the inspector deems appropriate having regard to the circumstances of the case.

(9) Where a provision of this section has the effect of providing that any preliminary tax specified in a notice under *subsection (1)* ceases to become payable, the provision shall not have the effect of removing from any chargeable person an obligation imposed on that person by *section 952* to pay an amount of preliminary tax.

(10) *Section 929* shall, with any necessary modifications, apply to notices of preliminary tax under this section as it applies to assessments.

(11) Apart from *subsection (7)*, this section shall not apply to capital gains tax.

(12) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Making of assessments.

[FA88 s13; FA91 s48]

954.—(1) An assessment shall not be made on a chargeable person for a chargeable period at any time before the specified return date for the chargeable period unless at that time the chargeable person has delivered a return for the chargeable period, and an assessment shall not be made at a time when the making of the assessment is precluded under *section 955(2)*.

(2) Subject to *subsection (3)*, an assessment made on a chargeable person for a chargeable period shall be made by the inspector by reference to the particulars contained in the chargeable person's return.

(3) Where—

(*a*) a chargeable person makes default in the delivery of a return for a chargeable period, or

(*b*) the inspector is not satisfied with the return which has been delivered, or has received any information as to its insufficiency,

nothing in this section shall prevent the inspector from making an assessment in accordance with *section 919(4)* or *922*, as appropriate.

(4) (*a*) Where as respects a chargeable period the inspector is satisfied that a chargeable person has paid all amounts of tax which, if the inspector were to make an assessment on the chargeable person for the chargeable period, would be payable by the chargeable person for the chargeable period, the inspector may elect not to make an assessment on the chargeable person for the chargeable period and, where the inspector so elects, he or she shall give notice of the election to the chargeable person, and the amounts paid by the chargeable person shall be deemed to have been payable in all respects as if the inspector had made the assessment.

(*b*) Subject to *section 955(2)*, nothing in this subsection shall prevent an inspector from making an assessment on the chargeable person for the chargeable period at any time after the giving of the notice of election under this section. PT.41 S.954

(5) Where an inspector makes an assessment—

(*a*) under either of the provisions referred to in *subsection (3)* in default of the delivery of a return, or

(*b*) in circumstances where the chargeable person has calculated the amount of tax which will be payable by that person on foot of an assessment and the inspector does not at the time of the making of the assessment disagree with the tax as so calculated,

it shall not be necessary to set out in the notice of assessment any particulars other than particulars as to the amount of tax to be paid by the chargeable person.

(6) Notwithstanding *subsections (1)* to *(5)* but subject to *section 955(2)*, where a chargeable person has delivered a return for a chargeable period, the chargeable person may by notice in writing given to the inspector require the inspector to make an assessment for the chargeable period and the inspector shall make the assessment forthwith.

(7) Nothing in this section shall prevent an inspector from making an assessment in accordance with—

(*a*) *section 977(3)* or *subsection (2)* or *(3)* of *section 978*, as appropriate, and, notwithstanding *sections 952* and *958*, tax specified in such an assessment shall be due and payable in accordance with *section 979*,

(*b*) *subsection (4)* or *(5)*, as appropriate, of *section 980* and, notwithstanding *sections 952* and *958*, tax specified in such an assessment shall be due and payable in accordance with *section 980(10)*, or

(*c*) *section 1042* and, notwithstanding *sections 952* and *958*, tax specified in such an assessment shall be due and payable in accordance with *section 1042*.

955.—(1) Subject to *subsection (2)* and to *section 1048*, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

Amendment of and time limit for assessments.

[FA88 s9(1) (part of) and s14; FA91 s45(a)(vi) and s49]

(2) (*a*) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of the period of 6 years commencing at the end

of the chargeable period in which the return is delivered and no additional tax shall be payable by the chargeable person and no tax shall be repaid to the chargeable person after the end of the period of 6 years by reason of any matter contained in the return.

(*b*) Nothing in this subsection shall prevent the amendment of an assessment—

(i) where a relevant return does not contain a full and true disclosure of the facts referred to in *paragraph (a)*,

(ii) to give effect to a determination on any appeal against an assessment,

(iii) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv) to correct an error in calculation, or

(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of *section 804(3)*.

(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of *subsection (2)* may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine—

(*a*) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(*b*) that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4) (*a*) Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(*b*) This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the opinion that the chargeable person was acting with a view to the

evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question.

(5) (*a*) In this subsection, ''relevant chargeable period'' means—

(i) where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii) where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii) where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(*b*) *Sections 919(5)(b)* and *924* shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(*c*) For the purposes of *paragraph (b)*, where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person.

Inspector's right to make enquiries and amend assessments.

[FA88 s15; FA91 s50]

956.—(1) (*a*) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—

(i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.

(*b*) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in *paragraph (a)(i)* shall not preclude the inspector—

(i) from making such enquiries or taking such actions within his or her powers as he or she

considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to *section 955(2)*, from amending or further amending an assessment in such manner as he or she considers appropriate.

(*c*) Any enquiries and actions referred to in *paragraph (b)* shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 6 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2) (*a*) A chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in *subsection (1)(c)* in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of *subsection (1)(c)* may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.

(*b*) Any action required to be taken by the chargeable person and any further action proposed to be taken by the inspector pursuant to the inspector's enquiry or action shall be suspended pending the determination of the appeal.

(*c*) Where on the hearing of the appeal the Appeal Commissioners—

(i) determine that the inspector was precluded from making the enquiry or taking the action by reason of *subsection (1)(c)*, the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or

(ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action.

Appeals.

[FA88 s17; FA91 s51]

957.—(1) No appeal may be made against—

(*a*) a notice of preliminary tax under *section 953*,

(*b*) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of

and without departing from the statement or statements or the particular or particulars with regard to income, profits or gains or, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

(*c*) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where that amount had been agreed between the inspector and the chargeable person, or any person authorised by the chargeable person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

(2) (*a*) Where—

(i) a chargeable person makes default in the delivery of a return, or

(ii) the inspector is not satisfied with the return which has been delivered by a chargeable person, or has received any information as to its insufficiency,

and the inspector makes an assessment in accordance with *section 919(4)* or *922*, no appeal shall lie against that assessment until such time as—

(I) in a case to which *subparagraph (i)* applies, the chargeable person delivers the return, and

(II) in a case to which either *subparagraph (i)* or *(ii)* applies, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person,

and the time for bringing an appeal against the assessment shall be treated as commencing at the earliest date on which both the return has been delivered and that amount of tax has been paid, and references in this subsection to an assessment shall be construed as including references to any amendment of the assessment which is made before that earliest date.

(*b*) References in this subsection to an amount of tax shall be construed as including any amount of interest which would be due and payable under *section 1080* on that tax at the date of payment of the tax, together with any costs incurred or other amounts which may be charged or levied in pursuing the collection of the tax contained in the assessment or the assessment as amended, as the case may be.

(3) Subject to *subsections (1)* and *(2)*, where an assessment is amended under *section 955* (not being an amendment made by reason of the determination of an appeal), the chargeable person may appeal against the assessment as so amended in all respects as

if it were an assessment made on the date of the amendment and the notice of the assessment as so amended were a notice of the assessment, except that the chargeable person shall have no further right of appeal, in relation to matters other than additions to, deletions from, or alterations in the assessment, made by reason of the amendment, than the chargeable person would have had if the assessment had not been amended.

(4) Where an appeal is brought against an assessment or an amended assessment made on a chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal—

(*a*) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and

(*b*) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.

(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with *subsection (4)*, the notice shall, in so far as it relates to that amount or matter, be invalid and the appeal concerned shall, in so far as it relates to that amount or matter, be deemed not to have been brought.

(6) The chargeable person shall not be entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners, or the judge of the Circuit Court, as the case may be, are or is satisfied that the ground could not reasonably have been stated in the notice.

Date for payment of tax.

[FA88 s18; FA90 s24(d)(iii), (iv) and (v); FA91 s52(a); FA92 s32; FA93 s40; FA94 s13; FA95 s31]

958.—(1) In this section—

''pre-preceding chargeable period'', in relation to a chargeable period, means the chargeable period next before the preceding chargeable period;

''specified due date'' in relation to a year of assessment, means the 30th day of April in the year of assessment next after the year of assessment following that year of assessment.

(2) Preliminary tax appropriate to a chargeable period shall be due and payable—

(*a*) where the chargeable period is a year of assessment for income tax and subject to *subsection (10)*, on or before the 1st day of November in the year of assessment,

(*b*) where the chargeable period is a year of assessment for capital gains tax, on or before the 1st day of November following the year of assessment, or

(*c*) where the chargeable period is an accounting period of a company—

(i) within the period of 6 months from the end of the accounting period, or

(ii) where apart from this subparagraph the last day of the period within which the preliminary tax would be due and payable would be a day after the 28th

day of the month in which that period of 6 months ends, not later than the 28th day of that month, Pt.41 S.958

and accordingly references in this Part to the due date for the payment of an amount of preliminary tax shall be construed as references to the 1st day of November in the year of assessment, the 1st day of November following the year of assessment, the last day of that period of 6 months or the 28th day of the month in which that period of 6 months ends, as the case may be.

(3) Subject to *subsection (4)*, tax specified in an assessment made on a chargeable person for a chargeable period shall be due and payable—

(*a*) where the assessment is made before the due date for the payment of an amount of preliminary tax for the chargeable period, on or before that date, or

(*b*) where the assessment is made on or after that date—

(i) if the chargeable period is a year of assessment for income tax, on or before the specified due date for the year of assessment,

(ii) if the chargeable period is a year of assessment for capital gains tax, on or before the specified return date for the chargeable period or, if later, not later than one month from the date on which the assessment is made, and

(iii) if the chargeable period is an accounting period of a company, not later than one month from the date on which the assessment is made.

(4) Where but for this subsection tax specified in an assessment made on a chargeable person for a chargeable period would be due and payable in accordance with *subsection (3)(b)* and—

(*a*) the chargeable person has defaulted in the payment of preliminary tax for the chargeable period,

(*b*) the preliminary tax paid by the chargeable person for the chargeable period is less than, or less than the least of, as the case may be—

(i) 90 per cent of the tax payable by the chargeable person for the chargeable period,

(ii) in the case of an assessment to income tax made on a chargeable person for the chargeable period (being a year of assessment), the income tax payable for the preceding chargeable period, or

(iii) in the case of an assessment to income tax for the chargeable period (being a year of assessment) made on a chargeable person to whom *subsection (10)* applies, other than a chargeable person in relation to whom the amount of income tax payable or, taken in accordance with *subsection (5)(a)* to be payable, for the pre-preceding chargeable period was nil, 105 per cent of the income tax payable for the pre-preceding chargeable period,

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or

(*c*) the preliminary tax payable by the chargeable person for the chargeable period was not paid by the date on which it was due and payable,

the tax specified in the assessment shall be deemed to have been due and payable on the due date for the payment of an amount of preliminary tax for the chargeable period.

(5) For the purposes of *subparagraphs (ii)* and *(iii)* of *subsection (4)(b)*—

(*a*) subject to *subsection (7)*, where the chargeable person was not a chargeable person for the preceding chargeable period or for the pre-preceding chargeable period, the income tax payable for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, shall be taken to be nil, and

(*b*) where, after the due date for the payment of an amount of preliminary tax for a chargeable period which is a year of assessment, an amount of additional income tax for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period becomes payable, that additional income tax shall not be taken into account only if it became due and payable one month following the amendment to the assessment or the determination of the appeal, as the case may be, by virtue of *subsection (8)(b)* or *(9)(b)*.

(6) For the purpose of *subparagraphs (ii)* and *(iii)* of *subsection (4)(b)*, where the chargeable person is chargeable to income tax for a chargeable period—

(*a*) the tax payable for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period shall be determined without regard to any relief to which the chargeable person is or may become entitled for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, under *Part 16*, and

(*b*) the tax payable for the preceding chargeable period or, in the case of a chargeable person to whom *subsection (10)* applies, the pre-preceding chargeable period shall be determined without regard to any relief to which the chargeable person is or may become entitled for the preceding chargeable period or the pre-preceding chargeable period, as the case may be, under *section 481*.

(7) Where for a chargeable period, being a year of assessment for income tax, a chargeable person is assessed to tax in accordance with *section 1017*, and that person was not so assessed for the preceding chargeable period or for the pre-preceding chargeable period or for both of those periods either—

(*a*) because the person's spouse was so assessed for either or both of those periods, or

(*b*) because the person and the person's spouse were assessed to tax in accordance with *section 1016* or *1023* for either or both of those periods, Pt.41 S.958

subparagraphs (ii) and *(iii)* of *subsection (4)(b)* and *subsection (5)(a)* shall apply as if the person and the person's spouse had elected in accordance with *section 1018* or *1019*, as the case may be, for the person to be assessed to tax in accordance with *section 1017* for any of those periods for which the person or the person's spouse were entitled to so elect or would have been so entitled if *section 1019* had applied.

(8) (*a*) Subject to *paragraph (b)* and *subsection (9)*, any additional tax due by reason of the amendment of an assessment for a chargeable period shall be deemed to be due and payable on the same day as the tax charged by the assessment before its amendment was due and payable.

(*b*) Where—

(i) the assessment was made after the chargeable person had delivered a return containing a full and true disclosure of all material facts necessary for the making of the assessment, or

(ii) the assessment had previously been amended following the delivery of the return containing such disclosure,

any additional tax due by reason of the amendment of the assessment shall be deemed to have been due and payable not later than one month from the date of the amendment.

(9) (*a*) The amount by which the tax, found to be payable for a chargeable period on the determination of an appeal against an assessment made on a chargeable person for the chargeable period, is in excess of the amount of the tax for the chargeable period referred to in *section 957(2)(a)(II)* which the chargeable person had paid before the making of the appeal shall be deemed to be due and payable on the same date as the tax charged by the assessment is due and payable.

(*b*) Notwithstanding *paragraph (a)*, where—

(i) the tax which the chargeable person had paid before the making of the appeal is not less than 90 per cent of the tax found to be payable on the determination of the appeal, and

(ii) the tax charged by the assessment was due and payable in accordance with *subsection (3)*,

the excess referred to in that paragraph shall be deemed to be due and payable not later than one month from the date of the determination of the appeal.

(10) (*a*) This subsection shall apply to a chargeable person who authorises the Collector-General to collect preliminary tax by the debiting of the bank account of that person in accordance with *paragraph (b)* and complies with such conditions as the Collector-General may reasonably

impose to ensure that an amount of preliminary tax payable by a chargeable person for a chargeable period will be paid by the chargeable person in accordance with this subsection on or before the 9th day of December in the year of assessment to which the preliminary tax relates by virtue of *subsection (2)(a)*.

(*b*) Preliminary tax appropriate to a chargeable period where the chargeable period is a year of assessment for income tax shall be due and payable in the case of a chargeable person to whom this subsection applies in equal monthly instalments throughout the calendar year or a part of that year in which the due date for the payment of that preliminary tax in accordance with *subsection (2)(a)* falls, and the Collector-General shall debit the bank account of that chargeable person with such instalments on the 9th day of each month in that year or part of that year, as the case may be.

(*c*) Notwithstanding *paragraph (b)*, the Collector-General may at any time agree to alter the amount of preliminary tax to be debited to the bank account of the chargeable person in accordance with this subsection.

(*d*) For the purposes of this section, a chargeable person who pays an amount of preliminary tax appropriate to a chargeable period in accordance with this subsection shall be deemed to have paid that amount of preliminary tax on the due date for the payment of an amount of preliminary tax for the chargeable period.

Miscellaneous (*Part 41*).

[FA88 s20(5), s21(1), (3) to (5) and (7) to (8); FA91 s53; FA92 s33(1)]

959.—(1) *Section 1048* shall apply to an amendment of an assessment under *section 955* as it applies to an additional first assessment under *section 924*.

(2) Where the inspector or any other officer of the Revenue Commissioners acting with the knowledge of the inspector causes to issue, manually or by any electronic, photographic or other process, a notice of preliminary tax bearing the name of the inspector or a notice of assessment or a notice of an amendment of an assessment bearing the name of the inspector, that notice of preliminary tax shall for the purposes of the Tax Acts and the Capital Gains Tax Acts be deemed to have been given by the inspector to the best of his or her opinion, and that assessment or amended assessment to which the notice of assessment or notice of amended assessment relates, as the case may be, shall for those purposes be deemed to have been made by the inspector to the best of his or her judgment.

(3) An assessment which is otherwise final and conclusive shall not for any purpose of the Tax Acts and the Capital Gains Tax Acts be regarded as not final and conclusive or as ceasing to be final and conclusive by reason only of the fact that the inspector has amended or may amend the assessment pursuant to *section 955* and, where in the case of a chargeable person the inspector elects under *section 954(4)* not to make an assessment for any chargeable period, the Tax Acts and the Capital Gains Tax Acts shall apply as if an assessment for that chargeable period made on the chargeable person had become final and conclusive on the date on which the notice of election is given.

(4) The giving by a chargeable person of a notice pursuant to *section 876* shall not remove from the person an obligation to deliver a return under *section 951*. Pt.41 S.959

(5) The provisions of this Part as respects due dates for payment of tax shall apply subject to *sections 579(4)(b)* and *981*.

(6) References in this Part to any provision of the Income Tax Acts shall, where appropriate for capital gains tax and unless the contrary intention appears, be construed as a reference to those provisions as applied in relation to capital gains tax by *sections 913*, *931*, *976*, *1051*, *1077* or *1083*, as appropriate.

(7) *Section 926* shall not apply to a chargeable person as respects any chargeable period.

PART 42

Collection and Recovery

CHAPTER 1

Income tax

Date for payment of income tax other than under self assessment.

960.—Income tax contained in an assessment (other than an assessment made under *Part 41*) for any year of assessment shall be payable on or before the 1st day of November in that year, except that income tax included in any such assessment for any year of assessment which is made on or after the 1st day of November in that year shall be deemed to be due and payable not later than one month from the date on which the assessment is made.

[ITA67 s477(1); FA90 s24(a)]

Issue of demand notes and receipts.

961.—(1) When income tax becomes due and payable, the Collector-General shall make demand of the respective sums given to him or her in charge to collect from the persons charged with those sums, or at the places of their last abode, or on the premises in respect of which the tax is charged, as the case may require.

[ITA67 s478; FA96 s132(2) and Sch5 PtII]

(2) On payment of income tax, the Collector-General shall without charge give a receipt under his or her hand on the prescribed form.

Recovery by sheriff or county registrar.

962.—(1) Whenever any person makes default in paying any sum which may be levied on that person in respect of income tax, the Collector-General may issue a certificate to the county registrar or sheriff of the county in which the defaulter resides or has a place of business certifying the amount of the sum so in default and the person on whom the sum is leviable.

[ITA67 s485(1), (2) and (5); FA69 s65(1) and Sch5 PtI; FA82 s10]

(2) Immediately on receipt of the certificate the county registrar or sheriff shall proceed to levy the sum certified in the certificate to be in default by seizing all or any of the goods, animals and other chattels within his or her bailiwick belonging to the defaulter, and for such purposes the county registrar or sheriff shall (in addition to the rights, powers and duties conferred on him or her by this section) have all such rights, powers and duties as are for the time being vested in him or her by law in relation to the execution of a writ of

fieri facias in so far as those rights, powers and duties are not inconsistent with the additional rights, powers and duties conferred on him or her by this section.

(3) A county registrar or sheriff executing a certificate under this section shall be entitled—

(*a*) if the sum certified in the certificate to be in default exceeds £15,000, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales appointed by the Minister for Justice, Equality and Law Reform under section 14(1)(*a*) of the Enforcement of Court Orders Act, 1926, and for the time being in force, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order within the meaning of the Enforcement of Court Orders Act, 1926, (in this section referred to as an ''execution order'') of the High Court,

(*b*) if the sum certified in the certificate to be in default exceeds £2,500 but does not exceed £15,000, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales referred to in *paragraph (a)*, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order of the Circuit Court, and

(*c*) if the sum certified in the certificate to be in default does not exceed £2,500, to charge and (where appropriate) to add to that sum and (in any case) to levy under the certificate such fees and expenses, calculated according to the scales referred to in *paragraph (a)*, as the county registrar or sheriff would be entitled so to charge or add and to levy if the certificate were an execution order of the District Court.

Power of Collector-General and authorised officer to sue in Circuit Court or District Court.

[ITA67 s486(1), (2) and (4); FA94 s162(1)]

963.—(1) Where the amount due in respect of income tax does not exceed the amount which is the monetary limitation on the jurisdiction of the Circuit Court provided for in an action founded on quasi-contract at reference number 1 of the Third Schedule to the Courts (Supplemental Provisions) Act, 1961, the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer's own name in the Circuit Court for the amount so due as a debt due to the Minister for Finance.

(2) Where the amount so due does not exceed the amount which is the monetary limitation on the jurisdiction of the District Court provided for in an action founded on contract by clause (i) of paragraph A of section 77 of the Courts of Justice Act, 1924 (as amended by the Courts Act, 1991), the Collector-General or other officer of the Revenue Commissioners duly authorised to collect the tax may sue in that officer's own name in the District Court for the amount so due as a debt due to the Minister for Finance.

(3) The cost of any such proceedings brought by the Collector-General or other officer under this section shall be subject to the law and practice applicable to the costs of a like proceeding for the recovery of an ordinary civil debt of like amount in the same Court.

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Continuance of pending proceedings.

[ITA67 s187(3) and s487]

964.—(1) Where the Collector-General duly appointed to collect any income tax has instituted proceedings under *section 963*, or continues under this section any proceedings brought under *subsection (1)* or *(2)* of that section, for the recovery of such tax and, while such proceedings are pending, such Collector-General ceases for any reason to be the Collector-General so appointed to collect such tax, the right of such Collector-General to continue such proceedings shall forthwith terminate and the Collector-General duly appointed to collect such tax in succession to the Collector-General so ceasing shall if the Collector-General so appointed so desires be entitled to become and be a party to such proceedings in the place of the Collector-General so ceasing and be entitled to continue such proceedings accordingly.

(2) Where the Collector-General duly appointed to collect any income tax in succession to another Collector-General institutes or continues proceedings under *section 963* for the recovery of the tax or any balance of the tax, the other Collector-General shall for the purposes of the proceedings be deemed until the contrary is proved to have ceased to be the Collector-General appointed to collect the tax.

Evidence in proceedings in Circuit Court or District Court for recovery of income tax.

[ITA67 s489; FA74 s70, s86 and Sch2 PtI]

965.—(1) In any proceedings in the Circuit Court or the District Court for or in relation to the recovery of income tax an affidavit duly made by an officer of the Revenue Commissioners deposing to any of the following matters—

(*a*) that the assessment of tax was duly made,

(*b*) that the assessment has become final and conclusive,

(*c*) that the tax or any specified part of the tax is due and outstanding,

(*d*) that demand for the payment of the tax has been duly made,

shall be evidence until the contrary is proved of the matters so deposed to.

(2) Where the averments in the affidavit are not disputed by the defendant or respondent, it shall not be necessary for the officer by whom the affidavit was made to attend or give oral evidence at the hearing of the proceedings nor shall it be necessary to produce or put in evidence at the hearing any register, file, book of assessment or other record relating to the tax.

(3) Where any averment contained in the affidavit is disputed by the defendant or respondent, the judge shall, on such terms as to costs as he or she thinks just, give a reasonable opportunity by adjournment of the hearing or otherwise for the officer by whom the affidavit was made to attend and give oral evidence in the proceedings and for any register, file, book of assessment or other record relating to the tax to be produced and put in evidence in the proceedings.

High Court proceedings.

[ITA67 s488; FA74 s11 and Sch1 PtII; FA79 s12; FA80 s57(1)]

966.—(1) Without prejudice to any other means by which payment of sums due in respect of income tax may be enforced, an officer of the Revenue Commissioners authorised by them for the purposes of this subsection may sue in his or her own name in the High Court for the recovery of any sum due in respect of that tax,

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as a debt due to the Minister for Finance for the benefit of the Central Fund, from the person charged with that tax or from that person's executors or administrators or from any person from whom the sum in question is collectable, whether the person so charged was so charged before or after the passing of this Act, and the proceedings may be commenced by summary summons.

(2) Where an officer who has commenced proceedings pursuant to this section, or who has continued the proceedings by virtue of this subsection, dies or otherwise ceases for any reason to be an officer authorised for the purposes of *subsection (1)*—

(*a*) the right of such officer to continue the proceedings shall cease and the right to continue the proceedings shall vest in such other officer so authorised as may be nominated by the Revenue Commissioners,

(*b*) where such other officer is nominated, he or she shall be entitled accordingly to be substituted as a party to the proceedings in the place of the first-mentioned officer, and

(*c*) where an officer is so substituted, he or she shall give notice in writing of the substitution to the defendant.

(3) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying the following facts, that a person is an officer of the Revenue Commissioners and that he or she has been authorised by them for the purpose of *subsection (1)*, shall be evidence until the contrary is proved of those facts.

(4) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying the following facts—

(*a*) that the plaintiff has ceased to be an officer of the Revenue Commissioners authorised by them for the purposes of *subsection (1)*,

(*b*) that another person is an officer of the Revenue Commissioners,

(*c*) that such other person has been authorised by them for the purposes of *subsection (1)*, and

(*d*) that such other person has been nominated by them, in relation to the proceedings, for the purposes of *subsection (2)*,

shall be evidence until the contrary is proved of those facts.

(5) In proceedings pursuant to this section—

(*a*) a certificate signed by an inspector certifying the fact that before the institution of the proceedings a stated sum for income tax became due and payable by the defendant—

(i) under an assessment which had become final and conclusive, or

(ii) under *section 942(6)*,

and

(*b*) a certificate signed by the Collector-General certifying the following facts— PT.42 S.966

(i) that he or she is the Collector-General duly authorised to collect the stated sum referred to in *paragraph (a)*,

(ii) that before the institution of the proceedings payment of that stated sum was duly demanded from the defendant, and

(iii) that that stated sum or a stated part of that sum remains due and payable by the defendant,

shall be evidence until the contrary is proved of those facts.

(6) In proceedings pursuant to this section, a certificate certifying the fact or facts referred to in *subsection (3)* or *(4)* or *paragraph (a)* or *(b)* of *subsection (5)* and purporting to be signed as specified in that subsection or paragraph may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by a person holding at the time of the signature the office or position indicated in the certificate as the office or position of the person signing.

(7) All or any of the sums due from any one person in respect of income tax may be included in the same summons.

(8) Subject to this section, the rules of the High Court for the time being applicable to civil proceedings commenced by summary summons shall apply to proceedings pursuant to this section.

Evidence of electronic transmission of particulars of income tax to be collected in proceedings for recovery of tax.

[FA86 s113(6)]

967.—In any proceedings in the District Court, the Circuit Court or the High Court for or in relation to the recovery of any income tax, a certificate signed by the Collector-General or other authorised officer certifying that before the institution of proceedings a stated sum of income tax transmitted in accordance with *section 928(2)* became due and payable by the defendant—

(*a*) (i) under an assessment which had become final and conclusive, or

(ii) under *section 942(6)*,

and

(*b*) demand for the payment of the tax has been duly made,

shall be prima facie evidence until the contrary has been proved of those facts, and a certificate so certifying and purporting to be signed by the Collector-General or other authorised officer may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by the Collector-General or other authorised officer.

Judgments for recovery of income tax.

[ITA67 s492; FA74 s86 and Sch2 PtI; FA97 s146(1) and Sch9 PtI par1(34)]

968.—(1) In this section, ''judgment'' includes any order or decree.

(2) Where in any proceedings for the recovery of income tax judgment is given against the person against whom the proceedings

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are brought and the judgment provides for the arrest and imprisonment of that person, and a sum is accepted on account or in part payment of the amount for which the judgment was given—

(*a*) such acceptance shall not prevent or prejudice the recovery under the judgment of the balance remaining unpaid of that amount,

(*b*) the judgment shall be capable of being executed and enforced in respect of the balance as fully in all respects and by the like means as if the balance were the amount for which the judgment was given,

(*c*) the law relating to the execution and enforcement of the judgment shall apply in respect of the balance accordingly, and

(*d*) a certificate by a Secretary or an Assistant Secretary of the Revenue Commissioners stating the amount of the balance shall, for the purposes of the enforcement and execution of the judgment, be evidence until the contrary is proved of the amount of the balance.

Duration of imprisonment for non-payment of income tax.

[ITA67 s493; FA74 s86 and Sch2 PtI]

969.—Where any person is committed to prison by a court of competent jurisdiction for non-payment of a sum of money due to the Minister for Finance for the benefit of the Central Fund in respect of income tax, the Revenue Commissioners are hereby authorised and required at the expiration of 6 months from the date of the committal of such person to prison to order his or her discharge from prison whether the sum for the non-payment of which he or she was so committed has or has not been paid.

Recovery of income tax charged on profits not distrainable.

[ITA67 s494(1)]

970.—Where income tax is charged on the profits of royalties, markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of those profits shall be answerable for the income tax so charged, and may retain and deduct that tax out of any such profits.

Priority of income tax debts over other debts.

[ITA67 s482(1) and (2)]

971.—(1) No goods or chattels whatever, belonging to any person at the time any income tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made or to whom the assignment was made pays or causes to be paid to the Collector-General before the sale or removal of the goods or chattels all arrears of income tax due at the time of seizure, or payable for the year in which the seizure is made.

(2) Where income tax is claimed for more than one year, the person at whose instance the seizure has been made may, on paying to the Collector-General the income tax which is due for one whole year, proceed in that person's seizure in the like manner as if no income tax had been claimed.

PT.42
Duty of employer as to income tax payable by employees.

972.—(1) Where any employed person has omitted to make payment of any income tax under Schedule D, E or F due and payable by that person for any year, the Revenue Commissioners may give notice to that person's employer at any time after a period of 3 months has elapsed since such income tax became due and payable requiring the employer to deduct the amount of income tax so in arrear from any remuneration payable by the employer to the employed person.

[ITA67 s484(1) to (4) and (6) and (7); F(MP)A68 s3(3) and Sch PtII; FA96 s132(2) and Sch5 PtII; FA97 s146(1) and Sch9 PtI par1(33)]

(2) On receipt of the notice, the employer shall deduct such sums, not exceeding in the aggregate the total amount of income tax so in arrear, at such times and in such manner as the Revenue Commissioners may direct and shall forthwith pay over the amounts so deducted to the Collector-General.

(3) Where any employer refuses or neglects to pay over to the Collector-General any sums within the time specified in the notice, the employer shall be liable to pay any such sum as if it had been duly assessed on the employer, and proceedings for the recovery of that sum may be taken in any manner prescribed by the Income Tax Acts, and failure on the part of the employer to deduct any such sum from the employed person shall not be any bar to the recovery of the sum by proceedings.

(4) Where the employer is a body of persons, *subsections (3)* and *(4)* of *section 897* and *subsections (2)* and *(3)* of *section 1044* shall apply in relation to anything required to be done under this section.

(5) An employer who pays over to the Collector-General any such sum of income tax as is required by the notice shall be acquitted and discharged of so much money as is represented by the payment as if that sum of money had actually been paid as remuneration to the employed person.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

CHAPTER 2

Corporation tax

Collection of corporation tax.

973.—(1) The Collector-General shall collect and levy the tax from time to time charged on all assessments to corporation tax of which particulars have been transmitted to him or her under *section 928(1)*.

[CTA76 s145(1) and (2)]

(2) All such powers as are exercisable with respect to the collecting and levying of sums of income tax under Schedule D of which particulars are transmitted under *section 928(1)* shall extend with respect to sums of corporation tax of which particulars are transmitted under that section.

Priority for corporation tax.

974.—The priority attaching to assessed taxes under sections 98 and 285 of the Companies Act, 1963, shall apply to corporation tax.

[CTA76 s145(5)]

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Application of *sections 964(2), 980(8)* and *981* for purposes of corporation tax.

975.—(1) *Subsection (2)* of *section 964* shall apply in relation to corporation tax as it applies in relation to income tax, and accordingly the reference in that subsection to income tax shall apply as if it was or included a reference to corporation tax.

[CTA76 s140(2), s147(1) and (2) and Sch2 PtII par6 and par12]

(2) *Section 980(8)* shall apply for corporation tax as for capital gains tax, and references to capital gains tax in that section shall apply accordingly as if they were or included references to corporation tax.

(3) *Section 981* shall apply for the purposes of corporation tax as it applies for the purposes of capital gains tax.

CHAPTER 3

Capital gains tax

Collection of capital gains tax.

976.—(1) The Collector-General for the time being appointed under *section 851* shall collect and levy capital gains tax from time to time charged in all assessments made under the Capital Gains Tax Acts of which particulars have been transmitted to him or her under *section 928(1)* as applied to capital gains tax by *section 931*, and the provisions of *section 851* relating to the nomination by the Revenue Commissioners of persons to act as the Collector-General or to exercise the powers of the Collector-General shall apply to capital gains tax as they apply to income tax.

[CGTA75 s51(1) and Sch4 Pars1(3), 2(1) and 2(2)]

(2) The provisions of the Income Tax Acts relating to the collection and recovery of income tax shall, subject to any necessary modifications, apply in relation to capital gains tax as they apply in relation to income tax chargeable under Schedule D.

(3) In particular and without prejudice to the generality of *subsection (2)*, *Chapter 1* of this Part (other than *sections 960* and *972*) shall, subject to any necessary modifications, apply to capital gains tax.

Recovery of capital gains tax from shareholder.

977.—(1) In this section, ''capital distribution'' has the same meaning as in *section 583*.

[CGTA75 s51(1) and Sch4 par17]

(2) This section shall apply where a person (in this section referred to as ''the beneficiary'') connected with a company resident in the State receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(*a*) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrues to the company, or

(*b*) the distribution constitutes such a disposal of assets.

(3) Where—

(*a*) the capital gains tax assessed on the company for the year of assessment in which the chargeable gain referred to in *subsection (2)* accrues includes any amount in respect of that chargeable gain, and

(*b*) any of the capital gains tax assessed on the company for that year is not paid within 6 months from the date when it becomes payable by the company,

the beneficiary may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that capital gains tax— Pt.42 S.977

(i) not exceeding the amount or value of the capital distribution which the beneficiary has received or became entitled to receive, and

(ii) not exceeding a proportion equal to the beneficiary's share of the capital distribution made by the company of capital gains tax on the amount of that gain at the rate in force when the gain accrued.

(4) A beneficiary paying any amount of tax under this section shall be entitled to recover a sum equal to that amount from the company.

(5) This section is without prejudice to any liability of the beneficiary receiving or becoming entitled to receive the capital distribution in respect of a chargeable gain accruing to that beneficiary by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

978.—(1) In this section— Gifts: recovery of capital gains tax from donee.

[CGTA75 s51(1) and Sch4 par18]

''old asset'' and ''new asset'' have the same meanings respectively as in *section 597*;

references to a donor include, in the case of an individual who has died, references to his or her personal representatives;

references to a gift include references to any transaction otherwise than by means of a bargain made at arm's length in so far as money or money's worth passes under the transaction without full consideration in money or money's worth, and ''donor'' and ''donee'' shall be construed accordingly.

(2) Where—

(*a*) a chargeable gain accrues in any year of assessment to any person on the disposal of an asset by means of a gift, and

(*b*) any amount of capital gains tax assessed on that person for that year of assessment is not paid within 12 months from the date when the tax becomes payable,

the donee may by an assessment made not later than 2 years from the date when the tax became payable be assessed and charged (in the name of the donor) to capital gains tax on an amount—

(i) not exceeding the amount of the chargeable gain so accruing, and

(ii) not exceeding such an amount of chargeable gains as would, if charged at the rate provided in *section 28(3)*, result in liability to an amount of capital gains tax equal to that amount of capital gains tax which was not paid by the donor.

(3) Where the gift consists of a new asset, the donee may, in addition to being assessed and charged under *subsection (2)* in respect of the new asset, be assessed and charged as if the chargeable gain on the disposal of the old asset were a chargeable gain on the disposal of the new asset the capital gains tax in respect of which was

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not paid within 12 months from the date when the tax had become payable.

(4) (*a*) Where a person on whom capital gains tax is assessed and charged in respect of the disposal of an asset transfers directly or indirectly by means of a gift to a donee—

(i) the whole of the proceeds of the disposal, or

(ii) in a case where the asset is a new asset acquired by the use of the proceeds of the disposal of an old asset, the whole of the proceeds of the disposal of the new asset,

subsections (2) and *(3)* shall apply to the amount of capital gains tax so assessed and charged.

(*b*) Where a person on whom capital gains tax is assessed and charged in respect of the disposal of an asset transfers directly or indirectly by means of a gift to a donee—

(i) part of the proceeds of the disposal, or

(ii) in a case where the asset is a new asset acquired by the use of the proceeds of the disposal of an old asset, part of the proceeds of the disposal of the new asset,

subsections (2) and *(3)* shall apply to such part of the amount of capital gains tax so assessed and charged as bears to the whole of such tax the same proportion that that part of the proceeds bears to the whole of those proceeds.

(5) The donee of a gift paying any amount of tax in pursuance of this section shall, subject to any terms or conditions of the gift, be entitled to recover a sum of that amount from the donor of the gift as a simple contract debt in any court of competent jurisdiction.

(6) This section shall apply in relation to a gift made to 2 or more donees with any necessary modifications and subject to the condition that each such donee shall be liable to be assessed and charged in respect only of such part of the amount of capital gains tax payable by the donees by virtue of this section as bears to the whole of such tax the same proportion as the part of the gift made to that donee bears to the whole of the gift.

Time for payment of capital gains tax assessed under *sections 977(3)* or *978(2)* and *(3)*.

[CGTA75 s5(2); FA88 s13(7)(c); FA91 s48]

979.—Capital gains tax assessed on any person under *section 977(3)* or *subsections (2)* and *(3)* of *section 978* in respect of gains accruing in any year shall be payable by that person at or before the expiration of 3 months following that year, or at the expiration of a period of 2 months beginning with the date of the making of the assessment, whichever is the later.

Deduction from consideration on disposal of certain assets.

[CGTA75 s51(1) and Sch4 par11(1) to (10A); FA89 s29; FA95 s76; FA96 s59]

980.—(1) In this section—

''designated area'' means an area designated by order under section 2 of the Continental Shelf Act, 1968;

''exploration or exploitation rights'' has the same meaning as in *section 13*;

''shares'' includes stock and any security.

(2) This section shall apply to assets that are— PT.42 S.980

(*a*) land in the State,

(*b*) minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals,

(*c*) exploration or exploitation rights in a designated area,

(*d*) shares in a company deriving their value or the greater part of their value directly or indirectly from assets specified in *paragraph (a)*, *(b)* or *(c)*, other than shares quoted on a stock exchange,

(*e*) shares, other than shares quoted on a stock exchange, to which *section 584* applies, whether by virtue of that section or any other section, so that, as respects a person disposing of those shares, they are treated as the same shares as shares specified in *paragraph (d)*, acquired as the shares so specified were acquired, and

(*f*) goodwill of a trade carried on in the State.

(3) This section shall not apply where the amount or value of the consideration in money or money's worth on a disposal does not exceed the sum of £100,000; but if an asset owned at one time by one person, being an asset to which this section would but for this subsection apply, is disposed of by that person in parts—

(*a*) to the same person, or

(*b*) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the several disposals shall for the purposes of this subsection, but not for any other purpose, be treated as a single disposal.

(4) (*a*) Subject to *paragraph (b)*, on payment of the consideration for acquiring an asset to which this section applies—

(i) the person by or through whom any such payment is made shall deduct from that payment a sum representing an amount of capital gains tax equal to 15 per cent of that payment,

(ii) the person to whom the payment is made shall allow such deduction on receipt of the residue of the payment, and

(iii) the person making the deduction shall, on proof of payment to the Revenue Commissioners of the amount so deducted, be acquitted and discharged of so much money as is represented by the deduction as if that sum had been actually paid to the person making the disposal.

(*b*) Where the person disposing of the asset produces to the person acquiring the asset a certificate issued under *subsection (8)* in relation to the disposal, no deduction referred to in *paragraph (a)* shall be made.

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(5) Where any payment referred to in *subsection (4)(a)* is made by or on behalf of any person, that person shall forthwith deliver to the Revenue Commissioners an account of the payment and of the amount deducted from the payment, and the inspector shall, notwithstanding any other provision of the Capital Gains Tax Acts, assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount of the payment at the rate of 15 per cent.

(6) Where, in relation to any payment referred to in *subsection (4)(a)*, any person has made default in delivering an account required by this section, or where the inspector is not satisfied with the account, the inspector may estimate the amount of the payment to the best of his or her judgment and, notwithstanding *section 31*, may assess and charge that person to capital gains tax for the year of assessment in which the payment was made on the amount so estimated at the rate of 15 per cent.

(7) Where the amount of capital gains tax assessed and charged under *subsection (5)* or *(6)* is paid, appropriate relief shall, on a claim being made in that behalf, be given to the person chargeable in respect of the gain on the disposal, whether by discharge or repayment or otherwise.

(8) A person chargeable to capital gains tax on the disposal of an asset to which this section applies may apply to the inspector for a certificate that tax should not be deducted from the consideration for the disposal of the asset and that the person acquiring the asset should not be required to give notice to the Revenue Commissioners in accordance with *subsection (9)(a)*, and, if the inspector is satisfied that the person making the application is the person making the disposal and that—

(*a*) that person is resident in the State,

(*b*) no amount of capital gains tax is payable in respect of the disposal, or

(*c*) the capital gains tax chargeable for the year of assessment for which that person is chargeable in respect of the disposal of the asset and the tax chargeable on any gain accruing in any earlier year of assessment (not being a year ending earlier than the 6th day of April, 1974) on a previous disposal of the asset has been paid,

the inspector shall issue the certificate to the person making the application and shall issue a copy of the certificate to the person acquiring the asset.

(9) (*a*) Where—

(i) after the 2nd day of June, 1995, a person acquires an asset to which this section applies and *section 978* does not apply,

(ii) the consideration for acquiring the asset is of such a kind that the deduction mentioned in *subsection (4)* cannot be made out of the consideration, and

(iii) the person disposing of the asset does not, at or before the time at which the acquisition is made, produce to the person acquiring the asset a certificate under *subsection (8)* in relation to the disposal,

the person acquiring the asset shall within 7 days of the time at which the acquisition is made— PT.42 S.980

(I) notify the Revenue Commissioners of the acquisition in a notice in writing containing particulars of—

(A) the asset acquired,

(B) the consideration for acquiring the asset,

(C) the market value of that consideration estimated to the best of that person's knowledge and belief, and

(D) the name and address of the person making the disposal,

and

(II) pay to the Collector-General an amount of capital gains tax equal to 15 per cent of the market value of the consideration so estimated.

(*b*) Capital gains tax which by virtue of *paragraph (a)(II)* is payable by a person acquiring an asset shall—

(i) be payable by that person in addition to any capital gains tax which by virtue of any other provision of the Capital Gains Tax Acts is payable by that person,

(ii) be due within 7 days of the time at which that person acquires the asset, and

(iii) be payable by that person without the making of an assessment;

but tax which has become so due may be assessed on the person acquiring the asset (whether or not it has been paid when the assessment is made) if that tax or any part of that tax is not paid on or before the due date.

(*c*) Where any person acquiring an asset has in pursuance of *paragraph (a)(II)* paid any amount of capital gains tax by reference to the market value of the consideration for acquiring the asset, that person shall be entitled to recover a sum of that amount from the person disposing of the asset as a simple contract debt in any court of competent jurisdiction; but where a copy of a certificate under *subsection (8)* is issued to the person acquiring the asset, being a copy of a certificate in relation to the disposal by which the person acquired the asset, that person—

(i) shall not be entitled thereafter to so recover that sum, and

(ii) shall be repaid that amount of tax.

(*d*) This section shall apply in relation to the acquisition of an asset by 2 or more persons with any necessary modifications and subject to the condition that each such person shall be liable to be assessed and charged in respect only of such part of the amount of capital gains tax payable

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by those persons by virtue of *paragraph (b)* as bears to the whole of such tax the same proportion as the part of the asset acquired by that person bears to the whole of the asset.

(10) Notwithstanding *sections 979* and *1042*, where an amount of capital gains tax is assessed and charged pursuant to this section, such amount shall be due and payable on the day after the day on which the assessment is made.

(11) (*a*) Subject to *paragraph (b)*, where there is a disposal of assets by virtue of a capital sum being derived from those assets, the person paying the capital sum shall, notwithstanding that no asset is acquired by that person, be treated for the purposes of this section as acquiring the assets disposed of for a consideration equal to the capital sum, whether that sum is paid in money or money's worth, and this section shall, subject to any necessary modifications, apply accordingly.

(*b*) *Paragraph (a)* shall not apply where there is a disposal of an asset by virtue of a capital sum being derived from the asset under a policy of insurance of the risk of any kind of damage to the asset.

Payment by instalments where consideration due after time of disposal.

[CGTA75 s44(1)]

981.—Where the consideration or part of the consideration taken into account in the computation of a chargeable gain is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, then, if the person making the disposal satisfies the Revenue Commissioners that such person would otherwise suffer undue hardship, the capital gains tax on such a chargeable gain accruing on a disposal may, at such person's option, be paid by such instalments as the Revenue Commissioners may allow over a period not exceeding 5 years and ending not later than the time at which the last of the first-mentioned instalments is payable.

Preferential payment.

[CGTA75 s51(1) and Sch4 par15]

982.—The priority attaching to assessed taxes under section 81 of the Bankruptcy Act, 1988, and sections 98 and 285 of the Companies Act, 1963, shall apply to capital gains tax.

CHAPTER 4

Collection and recovery of income tax on certain emoluments (PAYE system)

Interpretation (*Chapter 4*).

[ITA67 s124]

983.—In this Chapter, except where the context otherwise requires—

''emoluments'' means anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments;

''employee'' means any person in receipt of emoluments;

''employer'' means any person paying emoluments;

''income tax month'' means a month beginning on the 6th day of any of the months of April to March in any year of assessment;

"tax deduction card" means a tax deduction card in the form prescribed by the Revenue Commissioners or such other document corresponding to a tax deduction card as may be authorised by the Revenue Commissioners in any particular case. PT.42 S.983

984.—(1) This Chapter shall apply to all emoluments except emoluments which are emoluments in respect of which the employer has been notified by the inspector that they are emoluments which arise from an office or employment and from which, in the opinion of the inspector, having regard to the circumstances of the office or employment or to the amount of the emoluments, the deduction of tax by reference to this Chapter is impracticable. Application.

[ITA67 s125; FA85 s6(1) and (2)]

(2) The inspector may, if a change in the circumstances of the office or employment or in the amount of the emoluments so warrants, cancel a notification given under *subsection (1)* by notice in writing given to the employer, and this Chapter shall then apply to payments of emoluments arising from the office or employment made after the date of such notice.

(3) Any notice issued by or on behalf of the Revenue Commissioners under section 125 of the Income Tax Act, 1967, before the 6th day of April, 1986, shall not have effect in relation to emoluments arising in the year 1997-98 or any subsequent year of assessment.

985.—On the making of any payment of any emoluments to which this Chapter applies, income tax shall, subject to this Chapter and in accordance with regulations under this Chapter, be deducted or repaid by the person making the payment notwithstanding that— Method of collection.

[ITA67 s126; FA72 s46(1) and Sch4 PtI]

(*a*) when the payment is made no assessment has been made in respect of the emoluments, or

(*b*) the emoluments are in whole or in part emoluments for some year of assessment other than that during which the payment is made.

986.—(1) The Revenue Commissioners shall make regulations with respect to the assessment, charge, collection and recovery of income tax in respect of emoluments to which this Chapter applies or of income tax for any previous year of assessment remaining unpaid, and those regulations may, in particular and without prejudice to the generality of the foregoing, include provision— Regulations.

[ITA67 s127(1), (2), (3)(a)(i) and (b) (part of), (4), (5) and (7); FA72 s2(1); FA74 s11 and Sch1 PtII; FA93 s2(2) and Sch1 PtI par2; FA97 s6]

(*a*) for requiring any employer making any payment of emoluments to which this Chapter applies, when that employer makes the payment, to make a deduction or repayment of tax calculated by reference to such rate or rates of tax for the year as may be specified and any allowances, deductions and reliefs appropriate in the case of the employee as indicated by the particulars on the tax deduction card supplied in respect of the employee by the Revenue Commissioners;

(*b*) for rendering persons who are required to make any such deduction or repayment, in the case of a deduction (whether or not made), accountable for the amount of the tax and liable to pay that amount to the Revenue Commissioners and, in the case of a repayment, entitled

(if a repayment has been made) to be paid it, or given credit for it, by the Revenue Commissioners;

(*c*) for the production to and inspection by persons authorised by the Revenue Commissioners of wages sheets and other documents and records for the purpose of satisfying themselves that tax in respect of emoluments to which this Chapter applies has been and is being duly deducted, repaid and accounted for;

(*d*) for the collection and recovery, whether by deduction from emoluments paid in any year or otherwise, of tax in respect of emoluments to which this Chapter applies which has not been deducted or otherwise recovered during the year;

(*e*) for appeals with respect to matters arising under the regulations which would not otherwise be the subject of an appeal;

(*f*) for the deduction of tax at the standard rate and at the higher rate in such cases or classes of cases as may be provided for by the regulations;

(*g*) for requiring any employer making any payment of emoluments to which this Chapter applies, when making a deduction or repayment of tax in accordance with this Chapter and regulations under this Chapter, to make such deduction or repayment as would require to be made if the amount of emoluments were the emoluments reduced by the amount of any contributions payable by the employee and deductible by the employer from the emoluments being paid and which by virtue of *Chapter 1* of *Part 30* are for the purposes of assessment under Schedule E allowed as a deduction from the emoluments;

(*h*) for requiring every employer who pays emoluments to which this Chapter applies exceeding the limit specified in *subsection (5)* to notify the Revenue Commissioners within the period specified in the regulations that that employer is such an employer;

(*i*) for requiring every employer who pays emoluments to which this Chapter applies exceeding the limits specified in *subsection (5)* to keep and maintain a register of that employer's employees in such manner as may be specified in the regulations and, on being required to do so by the Revenue Commissioners, to deliver the register to the Revenue Commissioners within the period specified in the notice;

(*j*) for treating persons who are not employers as employers in such cases or classes of cases as may be provided for by the regulations.

(2) Regulations under this section shall apply notwithstanding anything in the Income Tax Acts, but shall not affect any right of appeal which a person would have apart from the regulations.

(3) (*a*) Tax deduction cards shall be prepared with a view to securing that in so far as may be practicable the total tax payable for the year of assessment in respect of any

emoluments is deducted from the emoluments paid during that year. PT.42 S.986

(*b*) In *paragraph (a)*, any reference to the total tax payable for a year shall be construed as a reference to the total tax estimated to be payable for the year in respect of the emoluments, subject to a provisional deduction for allowances and reliefs and subject also, if necessary, to making an addition to that estimated amount (including a nil amount) for amounts remaining unpaid on account of income tax for any previous year of assessment and to making a deduction from that estimated amount for amounts overpaid on account of any such income tax.

(4) Notwithstanding any other provision of this section, when stating on a tax deduction card an amount in respect of allowances, deductions and reliefs the amount may be rounded up to a convenient greater amount and stated accordingly, and, as respects the amount of tax which is not deducted in the year of assessment as a result of such statement, the adjustment appropriate for its recovery shall be made in a subsequent year of assessment.

(5) (*a*) The limits referred to in *paragraphs (h)* and *(i)* of *subsection (1)* shall be emoluments at a rate equivalent to a rate of £6 per week, or in the case of an employee with other employment, £1 per week.

(*b*) In the case of employees paid monthly or at longer intervals, the references in *paragraph (a)* to a rate of £6 per week and a rate of £1 per week shall be treated as references to a rate of £26 per month and a rate of £4.50 per month respectively.

(6) (*a*) In this subsection—

"domestic employee" means an employee who is employed solely on domestic duties (including the minding of children) in the employer's private dwelling house;

"domestic employment" means employment by reference to which an employee is a domestic employee.

(*b*) Notwithstanding *subsection (5)*, as on and from the 6th day of June, 1997, regulations made in accordance with *paragraphs (h)* and *(i)* of *subsection (1)* shall not apply to an employer (being an individual) who pays emoluments to an employee engaged by that employer in a domestic employment where—

(i) the emoluments from that employment are less than £30 per week, and

(ii) the employer has only one such employee.

(7) Every regulation made under this section shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Pt.42
Penalties for breach of regulations.

[ITA67 s128(1), (1A), (2) and (4); FA72 s2(2); FA73 s43; FA76 s1; FA81 s4; FA82 s60; FA92 s234 and s248]

987.—(1) Where any person does not comply with any provision of regulations under this Chapter requiring that person to send any return, statement, notification or certificate or to remit income tax to the Collector-General or fails to make any deduction or repayment in accordance with any regulation made pursuant to *section 986(1)(g)*, that person shall be liable to a penalty of £1,200.

(2) Where the person mentioned in *subsection (1)* is a body of persons, the secretary of the body shall be liable to a separate penalty of £750.

(3) All penalties for failure to comply with any provision of regulations under this Chapter may, without prejudice to any other method of the recovery, be proceeded for and recovered summarily in the like manner as in summary proceedings for the recovery of any fine or penalty under any Act relating to the excise.

(4) In proceedings for recovery of a penalty under this section—

(*a*) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period—

(i) a stated return, statement, notification or certificate was not received from the defendant,

(ii) stated wages sheets or other records or documents were not produced by the defendant,

(iii) the defendant did not remit stated tax to the Collector-General, or

(iv) the defendant did not make a stated deduction or repayment of tax,

shall be evidence until the contrary is proved that the defendant did not during that period send that return, statement, notification or certificate or did not produce those wages sheets or other records or documents or did not remit that tax to the Collector-General or did not make that deduction or repayment of tax;

(*b*) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that a stated return or other document was duly sent to the defendant on a stated day shall be evidence until the contrary is proved that that person received that return or other document in the ordinary course;

(*c*) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has inspected the relevant records of the Revenue Commissioners and that it appears from them that during a stated period the defendant was an employer or a person whose name and address were registered in the register kept and maintained under regulation 8(4) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be evidence until the contrary is proved that the defendant was during that period an employer or, as the

case may be, a person whose name and address were so registered; PT.42 S.987

(*d*) a certificate certifying as provided for in *paragraph (a)*, *(b)* or *(c)* and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

Registration of certain persons as employers and requirement to send certain notifications.

[FA74 s72]

988.—(1) Where the Revenue Commissioners have reason to believe that a person is liable to send them a notification under regulation 8 of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), and has not done so, they may register that person's name and address in the register kept and maintained under paragraph (4) of that regulation (in this section referred to as ''the register'') and serve a notice on that person stating that that person has been so registered.

(2) Where a notice is served under *subsection (1)* on a person, the following provisions shall apply:

(*a*) if the person claims to be not liable to send the notification referred to in *subsection (1)*, the person may, by giving notice in writing to the Revenue Commissioners within the period of 14 days from the service of the notice under *subsection (1)*, require the claim to be referred to the Appeal Commissioners and their decision on the claim shall be final and conclusive;

(*b*) if no such claim is, within the time specified in *paragraph (a)*, required to be referred, or if such claim is required to be referred and there is a determination by the Appeal Commissioners against the appellant, the appellant shall be regarded for the purposes of the Regulations referred to in *subsection (1)* as an employer who had sent a notification under paragraph (1) of regulation 8 of those Regulations;

(c) if a claim is required to be referred and there is a determination by the Appeal Commissioners in favour of the appellant, the Revenue Commissioners shall on that determination delete the appellant's name and address from the register.

(3) (a) Where a person whose name and address is registered in the register is not liable, under regulation 31 of the Regulations referred to in *subsection (1)*, to remit to the Collector-General any amount of tax for an income tax month, such person shall, within the period of 9 days from the end of that month, make a declaration to that effect in a form prescribed by the Revenue Commissioners and shall send that form to the Collector-General.

(*b*) Where a person whose name and address is registered in the register ceases to pay emoluments to which this Chapter applies, such person shall, within the period of 14 days from the date on which such person ceased to pay such emoluments, notify the Revenue Commissioners to that effect.

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(4) *Section 987* shall apply to a non-compliance with *subsection (3)* as it applies to a non-compliance with regulations under this Chapter.

Estimation of tax due for income tax months.

989.—(1) In this section and in *sections 990* and *991*, ''the regulations'' means any regulations under *section 986*.

[FA68 s7(1), (2), (4), (5) and (8); FA85 s9(a)]

(2) Where the Revenue Commissioners have reason to believe that a person was liable under the regulations to remit income tax in relation to any income tax month, and the person has not remitted any income tax in relation to that income tax month, they may—

(*a*) estimate the amount of tax which should have been remitted by the person within the period specified in the regulations for the payment of such tax, and

(*b*) serve notice on the person of the amount so estimated.

(3) Where a notice is served under *subsection (2)* on a person, the following provisions shall apply:

(*a*) the person, if claiming to be not liable to remit any tax for the income tax month to which the notice relates, may by giving notice in writing to the Revenue Commissioners within the period of 14 days from the service of the notice require the claim to be referred for decision to the Appeal Commissioners and their decision shall be final and conclusive;

(*b*) on the expiration of that period, if no such claim is required to be so referred or, if such claim is required to be referred, on final determination by the Appeal Commissioners against the claim, the estimated tax specified in the notice shall be recoverable in the like manner and by the like proceedings as if—

(i) the person were an employer, and

(ii) the amount specified in the notice were the amount of tax which the person was liable under the regulations to deduct from emoluments paid by the person during the income tax month specified in the notice reduced by any amounts which the person was liable under the regulations to repay during the income tax month;

(*c*) if at any time after the service of the notice the person furnishes a declaration of the amount which the person is liable under the regulations to remit in respect of the income tax month specified in the notice and pays the tax in accordance with the declaration together with any interest and costs which may have been incurred in connection with the default, the notice shall, subject to *paragraph (d)*, stand discharged and any excess of tax which may have been paid shall be repaid;

(*d*) where action for the recovery of tax specified in a notice under *subsection (2)* has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under *section 962*, *paragraph (c)* shall not, unless the Revenue Commissioners otherwise direct, apply in relation to that notice until that action has been completed.

(4) A notice given by the Revenue Commissioners under *subsection (2)* may extend to 2 or more consecutive income tax months. PT.42 S.989

(5) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Estimation of tax due for year.

[FA68 s8(1), (2) and (4); FA85 s9(b)]

990.—(1) Where the inspector or such other officer as the Revenue Commissioners may nominate to exercise the powers conferred by this section (in this section referred to as ''other officer'') has reason to believe that the total amount of tax which an employer was liable under the regulations to remit in respect of the respective income tax months comprised in any year of assessment was greater than the amount of tax (if any) paid by the employer in respect of those months, then, without prejudice to any other action which may be taken, the inspector or other officer—

(*a*) may make an estimate in one sum of the total amount of tax which in his or her opinion should have been paid in respect of the income tax months comprised in that year, and

(*b*) may serve notice on the employer specifying—

(i) the total amount of tax so estimated,

(ii) the total amount of tax (if any) remitted by the employer in relation to the income tax months comprised in that year, and

(iii) the balance of tax remaining unpaid.

(2) Where a notice is served on an employer under *subsection (1)*—

(*a*) the employer may, if claiming that the total amount of tax or the balance of tax remaining unpaid is excessive, on giving notice in writing to the inspector or other officer within the period of 30 days from the service of the notice, appeal to the Appeal Commissioners;

(*b*) on the expiration of that period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by agreement or otherwise, the balance of tax remaining unpaid as specified in the notice or the amended tax as determined in relation to the appeal shall become due and be recoverable in the like manner and by the like proceedings as if the balance of tax or the amended tax had been charged on the employer under Schedule E.

(3) A notice given by the inspector or other officer under *subsection (1)* may extend to 2 or more years of assessment.

Interest.

[ITA67 s129; FA68 s9; FA73 s1(1); FA74 s71; FA75 s26; FA78 s46]

991.—(1) Where any amount of tax which an employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners is not so paid, simple interest on the amount shall be paid by the employer to the Revenue Commissioners, and such interest shall be calculated from the expiration of the period specified in the regulations for the payment of the

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amount and at the rate of 1.25 per cent for each month or part of a month during which the amount remains unpaid; but, if the amount of the interest as so calculated is less than £5, the amount of interest payable shall be £5.

(2) This section shall apply—

(*a*) to tax recoverable by virtue of a notice under *section 989* as if the tax were tax which the person was liable under the regulations to pay for the respective income tax month or months referred to in the notice, and

(*b*) to tax recoverable by virtue of a notice under *section 990* as if the tax were tax which the person was liable under the regulations to remit for the last income tax month of the year of assessment to which the notice relates.

Appeals against estimates under *section 989* or *990*.

[FA68 s10]

992.—The provisions of the Income Tax Acts relating to appeals shall apply with any necessary modifications to claims and appeals under *sections 989(3)* and *990(2)* as if those claims or appeals were appeals against assessments to income tax but, in relation to claims under *section 989(3)*, only in so far as those provisions apply to appeals to the Appeal Commissioners.

Recovery of tax.

[ITA67 s131; FA73 s22]

993.—(1) (*a*) The provisions of any enactment relating to the recovery of income tax charged under Schedule E shall apply to the recovery of any amount of tax which an employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners by reference to any income tax month as if that amount had been charged on the employer under Schedule E.

(*b*) In particular and without prejudice to the generality of *paragraph (a)*, this subsection applies *sections 962*, *963*, *966* and *998*.

(*c*) Provisions as applied by this subsection shall so apply subject to any modifications specified by regulations under *section 986*.

(2) Proceedings may be brought for the recovery of the total amount which the employer is liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners by reference to any income tax month without distinguishing the amounts which the employer is liable to pay by reference to each employee and without specifying the employees in question, and for the purposes of the proceedings that total amount shall be one single cause of action or one matter of complaint; but nothing in this subsection shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the employer is so liable to pay by reference to any income tax month and to the employer's several employees.

(3) In proceedings instituted by virtue of this section for the recovery of any amount of tax—

(*a*) a certificate signed by an officer of the Revenue Commissioners which certifies that a stated amount of tax is due and payable by the defendant shall be evidence until

the contrary is proved that that amount is so due and payable, and

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(*b*) a certificate so certifying and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by an officer of the Revenue Commissioners.

(4) Any reference in this section to an amount of tax shall include a reference to interest payable in the case in question under *section 991*.

(5) This section shall apply to the recovery of—

(*a*) any amount of tax estimated under *section 989*, and

(*b*) any amount of tax estimated under *section 990* or any balance of tax so estimated but remaining unpaid,

as if the amount so estimated or the balance of tax so estimated but remaining unpaid were an amount of tax which any person paying emoluments was liable under this Chapter and any regulations under this Chapter to pay to the Revenue Commissioners.

Priority in bankruptcy, etc. of certain amounts.

[ITA67 s132]

994.—(1) In this section, ''employer's liability for the period of 12 months'' means all sums which an employer was liable under this Chapter and any regulations under this Chapter to deduct from emoluments to which this Chapter applies paid by the employer during the period of 12 months mentioned in *subsection (2)*, reduced by any amounts which the employer was liable under this Chapter and any regulations under this Chapter to repay during the same period, and subject to the addition of interest payable under *section 991*.

(2) There shall be included among the debts which under section 81 of the Bankruptcy Act, 1988, are to be paid in priority to all other debts in the distribution of the property of a bankrupt, arranging debtor or person dying insolvent so much as is unpaid of the employer's liability for the period of 12 months before the date on which the order of adjudication of the bankrupt was made, the petition of arrangement of the debtor was filed or, as the case may be, the person died insolvent.

Priority in winding up of certain amounts.

[FA89 s10]

995.—For the purposes of subsection (2)(*a*)(iii) of section 285 of the Companies Act, 1963—

(*a*) the amount referred to in that subsection shall be deemed to include any amount—

(i) which, apart from regulation 31A of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), would otherwise have been an amount due at the relevant date in respect of sums which an employer is liable under this Chapter and any regulation under this Chapter (other than regulation 31A of those Regulations) to deduct from emoluments, to which this Chapter applies, paid by the employer during the period of 12 months next before the relevant date,

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(ii) reduced by any amount which the employer was liable under this Chapter and any regulation under this Chapter to repay during that period, and

(iii) with the addition of any interest payable under *section 991*,

and

(*b*) the relevant date shall, notwithstanding subsection (1) of section 285 of the Companies Act, 1963, be deemed to be the date which is the ninth day after the end of the income tax month in which the relevant date (within the meaning of that subsection) occurred.

Treatment for tax purposes of certain unpaid remuneration.

[FA76 s17(1) to (3)(a) and (4)(b)]

996.—(1) In this section—

''accounting period'', in relation to a trade or profession, means a period of 12 months ending on the date up to which the accounts of the trade or profession are usually made up and, where accounts of the trade or profession have not been made up, such period not exceeding 12 months as the Revenue Commissioners may determine;

''date of cessation'', in relation to an office or employment, means the date on which a person ceases to hold the office or employment;

''date of commencement'', in relation to an office or employment, means the date on which a person commences to hold the office or employment;

''period of account'', in relation to a trade or profession, means any period, other than an accounting period, for which the accounts of the trade or profession have been made up;

''period of accrual'', in relation to remuneration in respect of an office or employment in a trade or profession, means the period beginning on the later of—

(*a*) the first day of an accounting period, or period of account, of the trade or profession, or

(*b*) the date of commencement of the office or employment,

and ending on the earlier of—

(i) the last day of an accounting period, or period of account, or

(ii) the date of cessation of the office or employment;

''relevant date'' means—

(*a*) in relation to an accounting period, the last day of the period, and

(*b*) in relation to a period of account—

(i) where the period of account is less than 12 months, the last day of the period, and

(ii) where the period of account is more than 12 months, each 5th day of April within the period and the last day of the period; Pt.42 S.995

''remuneration'' includes all salaries, fees, wages, perquisites or profits whatever from an office or employment.

(2) Where remuneration (in this section referred to as ''unpaid remuneration'') which is deductible as an expense in computing the profits or income of a trade or profession for an accounting period or period of account for the purposes of Schedule D is unpaid at a relevant date—

(*a*) the unpaid remuneration shall be deemed to be emoluments to which this Chapter applies and shall be deemed to have been paid in accordance with *subsection (3)*, and

(*b*) this Chapter and the regulations made under this Chapter shall, with any necessary modifications, apply to the unpaid remuneration as if it had been so paid.

(3) Unpaid remuneration shall be deemed to have accrued from day to day throughout the period of accrual and there shall be deemed to have been paid on each relevant date so much of that remuneration as accrued up to that date or, if it is earlier, the date of cessation of the office or employment in respect of which the unpaid remuneration is payable—

(*a*) where there was no preceding relevant date, from the beginning of the period of accrual or, if it is later, the date of commencement of the office or employment in respect of which the unpaid remuneration is payable, and

(*b*) where there was a preceding relevant date, from the day following that date or, if it is later, the date of commencement of the office or employment in respect of which the unpaid remuneration is payable.

(4) This section shall not apply to unpaid remuneration paid before—

(*a*) the date of expiry of 6 months after the date (in this subsection referred to as ''the deemed date'') on which that remuneration is by virtue of *subsection (3)* deemed to have been paid, or

(*b*) in the case where the period of account is one of more than 12 months, the date of expiry of 18 months from the first day of that period of account if the date of expiry is later than the deemed date.

997.—(1) No assessment under Schedule E for any year of assessment need be made in respect of emoluments to which this Chapter applies except where— Supplementary provisions (*Chapter 4*).

[ITA67 s133; FA74 s11 and Sch1 PtII; FA93 s2(2) and Sch1 PtI par2]

(*a*) the person assessable, by notice in writing given to the inspector within 5 years from the end of the year of assessment, requires an assessment to be made,

(*b*) the emoluments paid in the year of assessment are not the same in amount as the emoluments which are to be treated as the emoluments for that year, or

(*c*) there is reason to suppose that the emoluments would, if assessed, be taken into account in computing the total income of a person who is liable to tax at the higher rate or would be so liable if an assessment were made in respect of the emoluments;

but where any such assessment is made credit shall be given for the amount of any tax deducted or estimated to be deductible from the emoluments.

(2) Where an employer pays to the Revenue Commissioners any amount of tax which, pursuant to this Chapter and any regulations under this Chapter, the employer has deducted from emoluments, the employer shall be acquitted and discharged of the sum represented by the payment as if the employer had actually paid that sum to the employee.

CHAPTER 5

Miscellaneous provisions

Recovery of moneys due.

[ITA67 s491; FA74 s86 and Sch2 PtI; CTA76 s147(1) and(2); CGTA75 s51(1) and Sch4 par2]

998.—(1) Every sum due in respect of income tax, corporation tax and capital gains tax and every fine, penalty or forfeiture incurred in connection with any of those taxes shall be deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund, and shall be payable to the Revenue Commissioners and may (without prejudice to any other mode of recovery of such sum, fine, penalty or forfeiture) be sued for and recovered by action, or other appropriate proceedings, at the suit of the Attorney General in any court of competent jurisdiction.

(2) Moneys so due or payable to or for the benefit of the Central Fund shall have attached to them all such rights, privileges and priorities as have heretofore attached to such moneys, but this subsection shall not operate to make such moneys payable in priority to other debts.

Taking by Collector-General of proceedings in bankruptcy.

[F(MP)A68 s27; CGTA75 s51(1) and Sch4 par2]

999.—(1) The Collector-General may sue out a debtor's summons and present a petition in bankruptcy in his or her own name in respect of taxes or duties due to the Minister for Finance for the benefit of the Central Fund, being taxes or duties which the Collector-General is empowered to collect and levy.

(2) Subject to this section, the rules of court for the time being applicable and the enactments relating to bankruptcy shall apply to proceedings taken by the Collector-General by virtue of this section.

Priority in bankruptcy, winding up, etc. for sums recovered or deducted under *sections 531*, *989* or *990*.

[FA68 s11; FA76 s14]

1000.—For the purposes of section 285 of the Companies Act, 1963, and of *section 994*, the sums referred to in section 285(2)(*a*)(iii) of the Companies Act, 1963, and in *section 994(1)* shall be deemed to include—

(*a*) amounts of tax deducted under *section 531(1)* and amounts of tax recoverable under regulation 12 of the Income Tax (Construction Contracts) Regulations, 1971 (S.I. No. 1 of 1971),

(*b*) amounts of tax recoverable under *section 989*, and

(*c*) amounts of tax recoverable under *section 990*,

which relate to a period or periods falling in whole or in part within the period of 12 months referred to in section 285(2)(*a*)(iii) of the Companies Act, 1963, or in *section 994(1)*, as may be appropriate, and in the case of any such amount for a period falling partly within and partly outside whichever of those periods of 12 months is appropriate, it shall be lawful to apportion the total sum or amount according to the respective lengths of the periods falling within the period of 12 months and outside the period of 12 months in order to determine the amount of tax which relates to the period of 12 months.

Liability to tax, etc. of holder of fixed charge on book debts of company.

[FA86 s115; FA95 s174]

1001.—(1) In this section, ''relevant amount'' means any amount which the company is liable to remit under—

(*a*) *Chapter 4* of this Part, and

(*b*) the Value-Added Tax Act, 1972.

(2) Subject to this section, where a person holds a fixed charge (being a fixed charge created on or after the 27th day of May, 1986) on the book debts of a company (within the meaning of the Companies Act, 1963), such person shall, if the company fails to pay any relevant amount for which it is liable, become liable to pay such relevant amount on due demand, and on neglect or refusal of payment may be proceeded against in the like manner as any other defaulter.

(3) This section shall not apply—

(*a*) unless the holder of the fixed charge has been notified in writing by the Revenue Commissioners that a company has failed to pay a relevant amount for which it is liable and that by virtue of this section the holder of the fixed charge—

(i) may become liable for payment of any relevant amount which the company subsequently fails to pay, and

(ii) where *paragraph (c)* does not apply, has become liable for the payment of the relevant amount which the company has failed to pay,

(*b*) to any amounts received by the holder of the fixed charge from the company before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with *paragraph (a)*, and

(*c*) where, within the period from the 2nd day of June, 1995, to the 22nd day of June, 1995, or within 21 days of the creation of the fixed charge, whichever is the later, the holder of the fixed charge furnishes to the Revenue Commissioners a copy of the prescribed particulars of the charge delivered or to be delivered to the registrar of companies in accordance with section 99 of the Companies Act, 1963, to any relevant amount which the company was liable to pay before the date on which the holder is notified in writing by the Revenue Commissioners in accordance with *paragraph (a)*.

(4) The amount or aggregate amount which a person shall be liable to pay in relation to a company in accordance with this section shall not exceed the amount or aggregate amount which the person

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has, while the fixed charge on book debts in relation to the company is in existence, received directly or indirectly from that company in payment or in part payment of any debts due by the company to the person.

(5) The Revenue Commissioners may, at any time and by notice in writing given to the holder of the fixed charge, withdraw with effect from a date specified in the notice a notification issued by them in accordance with *subsection (3)*; but such withdrawal shall not—

(*a*) affect in any way any liability of the holder of the fixed charge under this section which arose before such withdrawal, or

(*b*) preclude the issue under *subsection (3)* of a subsequent notice to the holder of the fixed charge.

(6) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Deduction from payments due to defaulters of amounts due in relation to tax.

[FA88 s73(1)(b) to (16) and (18); FA92 s241(a) to (d)]

1002.—(1) (*a*) In this section, except where the context otherwise requires—

"the Acts" means—

(i) the Customs Acts,

(ii) the statutes relating to the duties of excise and to the management of those duties,

(iii) the Tax Acts,

(iv) the Capital Gains Tax Acts,

(v) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(vi) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and

(vii) the Stamp Act, 1891, and the enactments amending or extending that Act,

and any instruments made thereunder;

"additional debt", in relation to a relevant person who has received a notice of attachment in respect of a taxpayer, means any amount which, at any time after the time of the receipt by the relevant person of the notice of attachment but before the end of the relevant period in relation to the notice, would be a debt due by the relevant person to the taxpayer if a notice of attachment were received by the relevant person at that time;

"debt", in relation to a notice of attachment given to a relevant person in respect of a taxpayer and in relation to that relevant person and taxpayer,

means, subject to *paragraphs (b)* to *(e)*, the amount or aggregate amount of any money which, at the time the notice of attachment is received by the relevant person, is due by the relevant person (whether on that person's own account or as an agent or trustee) to the taxpayer, irrespective of whether the taxpayer has applied for the payment (to the taxpayer or any other person) or for the withdrawal of all or part of the money;

''deposit'' means a sum of money paid to a financial institution on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the financial institution to which it is made;

''emoluments'' means anything assessable to income tax under Schedule E;

''financial institution'' means a holder of a licence issued under section 9 of the Central Bank Act, 1971, or a person referred to in section 7(4) of that Act, and includes a branch of a financial institution which records deposits in its books as liabilities of the branch;

''further return'' means a return made by a relevant person under *subsection (4)*;

''interest on unpaid tax'', in relation to a specified amount specified in a notice of attachment, means interest that has accrued to the date on which the notice of attachment is given under any provision of the Acts providing for the charging of interest in respect of the unpaid tax, including interest on an undercharge of tax which is attributable to fraud or neglect, specified in the notice of attachment;

''notice of attachment'' means a notice under *subsection (2)*;

''notice of revocation'' means a notice under *subsection (10)*;

''penalty'' means a monetary penalty imposed on a taxpayer under a provision of the Acts;

''relevant period'', in relation to a notice of attachment, means, as respects the relevant person to whom the notice of attachment is given, the period commencing at the time at which the notice is received by the relevant person and ending on the earliest of—

(i) the date on which the relevant person completes the payment to the Revenue Commissioners out of the debt, or the aggregate of the debt and any additional debt, due by the relevant person to the taxpayer named in the notice, of an amount equal to the specified amount in relation to the taxpayer,

(ii) the date on which the relevant person receives a notice of revocation of the notice of attachment, and

(iii) where the relevant person or the taxpayer named in the notice—

(I) is declared bankrupt, the date the relevant person or the taxpayer is so declared, or

(II) is a company which commences to be wound up, the relevant date within the meaning of section 285 of the Companies Act, 1963, in relation to the winding up;

''relevant person'', in relation to a taxpayer, means a person whom the Revenue Commissioners have reason to believe may have, at the time a notice of attachment is received by such person in respect of a taxpayer, a debt due to the taxpayer;

''return'' means a return made by a relevant person under *subsection (2)(a)(iii)*;

''specified amount'' has the meaning assigned to it by *subsection (2)(a)(ii)*;

''tax'' means any tax, duty, levy or charge which in accordance with any provision of the Acts is placed under the care and management of the Revenue Commissioners;

''taxpayer'' means a person who is liable to pay, remit or account for tax to the Revenue Commissioners under the Acts.

(*b*) Where a relevant person is a financial institution, any amount or aggregate amount of money, including interest on that money, which at the time the notice of attachment is received by the relevant person is a deposit held by the relevant person—

(i) to the credit of the taxpayer for the taxpayer's sole benefit, or

(ii) to the credit of the taxpayer and any other person or persons for their joint benefit,

shall be regarded as a debt due by the relevant person to the taxpayer at that time.

(*c*) Any amount of money due by the relevant person to the taxpayer as emoluments under a contract of service shall not be regarded as a debt due to the taxpayer.

(*d*) Where there is a dispute as to an amount of money which is due by the relevant person to the taxpayer, the amount in dispute shall be disregarded for the purposes of determining the amount of the debt.

(*e*) In the case referred to in *paragraph (b)*, a deposit held by a relevant person which is a financial institution to the credit of the taxpayer and any other person or persons (in this paragraph referred to as ''the other party or parties'') for their joint benefit shall be deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notices specified in *subsection (2)(e)*) to be held to the benefit of the taxpayer and the other party or parties to the deposit equally, and accordingly only the portion of the deposit so deemed shall be regarded as a debt due by the relevant person to the taxpayer at the time the notice of attachment is received by the relevant person and, where such evidence is produced within the specified time, only so much of the deposit as is shown to be held to the benefit of the taxpayer shall be regarded as a debt due by the relevant person to the taxpayer at that time.

(2) (*a*) Subject to *subsection (3)*, where a taxpayer has made default whether before or after the passing of this Act in paying, remitting or accounting for any tax, interest on unpaid tax, or penalty to the Revenue Commissioners, the Revenue Commissioners may, if the taxpayer has not made good the default, give to a relevant person in relation to the taxpayer a notice in writing (in this section referred to as ''the notice of attachment'') in which is entered—

(i) the taxpayer's name and address,

(ii) (I) the amount or aggregate amount, or

(II) in a case where more than one notice of attachment is given to a relevant person or relevant persons in respect of a taxpayer, a portion of the amount or aggregate amount,

of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment (the amount, aggregate amount, or portion of the amount or aggregate amount, as the case may be, being referred to in this section as ''the specified amount''), and

(iii) a direction to the relevant person—

(I) subject to *paragraphs (b)* and *(c)*, to deliver to the Revenue Commissioners, within the period of 10 days from the time at which the notice of attachment is received by the relevant person, a return in writing specifying whether or not any debt is due by the relevant person to the taxpayer at the time the notice is received by the relevant person and, if any debt is so due, specifying the amount of the debt, and

(II) if the amount of any debt is so specified, to pay to the Revenue Commissioners within the period referred to in *clause (I)* a sum equal to the amount of the debt so specified.

(*b*) Where the amount of the debt due by the relevant person to the taxpayer is equal to or greater than the specified amount in relation to the taxpayer, the amount of the debt specified in the return shall be an amount equal to the specified amount.

(*c*) Where the relevant person is a financial institution and the debt due by the relevant person to the taxpayer is part of a deposit held to the credit of the taxpayer and any other person or persons to their joint benefit, the return shall be made within a period of 10 days from—

(i) the expiry of the period specified in the notices to be given under *paragraph (e)*, or

(ii) the production of the evidence referred to in *paragraph (e)(II)*.

(*d*) A relevant person to whom a notice of attachment has been given shall comply with the direction in the notice.

(*e*) Where a relevant person which is a financial institution is given a notice of attachment and the debt due by the relevant person to the taxpayer is part of a deposit held by the relevant person to the credit of the taxpayer and any other person or persons (in this paragraph referred to as ''the other party or parties'') for their joint benefit, the relevant person shall on receipt of the notice of attachment give to the taxpayer and the other party or parties to the deposit a notice in writing in which is entered—

(i) the taxpayer's name and address,

(ii) the name and address of the person to whom a notice under this paragraph is given,

(iii) the name and address of the relevant person, and

(iv) the specified amount,

and which states that—

(I) a notice of attachment under this section has been received in respect of the taxpayer,

(II) under this section a deposit is deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notice under this paragraph) to be held to the benefit of the taxpayer and the other party or parties to the deposit equally, and

(III) unless such evidence is produced within the period specified in the notice given under this paragraph—

(A) a sum equal to the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) shall be paid to the Revenue Commissioners, where that amount is equal to or less than the specified amount, and

(B) where the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) is greater than the specified amount, a sum equal to the specified amount shall be paid to the Revenue Commissioners.

(3) An amount in respect of tax, interest on unpaid tax or a penalty, as respects which a taxpayer is in default as specified in *subsection (2)*, shall not be entered in a notice of attachment unless—

(*a*) a period of one month has expired from the date on which such default commenced, and

(*b*) the Revenue Commissioners have given the taxpayer a notice in writing (whether or not the document containing the notice also contains other information being communicated by the Revenue Commissioners to the taxpayer), not later than 7 days before the date of the receipt by the relevant person or relevant persons concerned of a notice of attachment, stating that if the amount is not paid it may be specified in a notice or notices of attachment and recovered under this section from a relevant person or relevant persons in relation to the taxpayer.

(4) If, when a relevant person receives a notice of attachment, the amount of the debt due by the relevant person to the taxpayer named in the notice is less than the specified amount in relation to the taxpayer or no debt is so due and, at any time after the receipt of the notice and before the end of the relevant period in relation to the notice, an additional debt becomes due by the relevant person to the taxpayer, the relevant person shall within 10 days of that time—

(*a*) if the aggregate of the amount of any debt so due and the additional debt so due is equal to or less than the specified amount in relation to the taxpayer—

(i) deliver a further return to the Revenue Commissioners specifying the additional debt, and

(ii) pay to the Revenue Commissioners the amount of the additional debt,

and so on for each subsequent occasion during the relevant period in relation to the notice of attachment on which an additional debt becomes due by the relevant person to the taxpayer until—

(I) the aggregate amount of the debt and the additional debt or debts so due equals the specified amount in relation to the taxpayer, or

(II) *paragraph (b)* applies in relation to an additional debt, and

(*b*) if the aggregate amount of any debt and the additional debt or debts so due to the taxpayer is greater than the specified amount in relation to the taxpayer—

(i) deliver a further return to the Revenue Commissioners specifying such portion of the latest

additional debt as when added to the aggregate of the debt and any earlier additional debts is equal to the specified amount in relation to the taxpayer, and

(ii) pay to the Revenue Commissioners that portion of the additional debt.

(5) Where a relevant person delivers, either fraudulently or negligently, an incorrect return or further return that purports to be a return or further return made in accordance with this section, the relevant person shall be deemed to be guilty of an offence under *section 1078.*

(6) (*a*) Where a notice of attachment has been given to a relevant person in respect of a taxpayer, the relevant person shall not, during the relevant period in relation to the notice, make any disbursements out of the debt, or out of any additional debt, due by the relevant person to the taxpayer except to the extent that any such disbursement—

(i) will not reduce the debt or the aggregate of the debt and any additional debts so due to an amount that is less than the specified amount in relation to the taxpayer, or

(ii) is made pursuant to an order of a court.

(*b*) For the purposes of this section, a disbursement made by a relevant person contrary to *paragraph (a)* shall be deemed not to reduce the amount of the debt or any additional debts due by the relevant person to the taxpayer.

(7) (*a*) *Sections 1052* and *1054* shall apply to a failure by a relevant person to deliver a return required by a notice of attachment within the time specified in the notice or to deliver a further return within the time specified in *subsection (4)* as they apply to a failure to deliver a return referred to in *section 1052*.

(*b*) A certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined the relevant records and that it appears from those records that during a specified period a specified return was not received from a relevant person shall be evidence until the contrary is proved that the relevant person did not deliver the return during that period.

(*c*) A certificate certifying as provided by *paragraph (b)* and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been so signed.

(8) Where a relevant person to whom a notice of attachment in respect of a taxpayer has been given—

(*a*) delivers the return required to be delivered by that notice but fails to pay to the Revenue Commissioners within the time specified in the notice the amount specified in the return or any part of that amount, or

(*b*) delivers a further return under *subsection (4)* but fails to pay to the Revenue Commissioners within the time specified in that subsection the amount specified in the further return or any part of that amount, PT.42 S.1002

the amount specified in the return or further return or the part of that amount, as the case may be, which the relevant person has failed to pay to the Revenue Commissioners may, if the notice of attachment has not been revoked by a notice of revocation, be sued for and recovered by action or other appropriate proceedings at the suit of an officer of the Revenue Commissioners in any court of competent jurisdiction.

(9) Nothing in this section shall be construed as rendering any failure by a relevant person to make a return or further return required by this section, or to pay to the Revenue Commissioners the amount or amounts required by this section to be paid by the relevant person, liable to be treated as a failure to which *section 1078* applies.

(10) (*a*) A notice of attachment given to a relevant person in respect of a taxpayer may be revoked by the Revenue Commissioners at any time by notice in writing given to the relevant person and shall be revoked forthwith if the taxpayer has paid the specified amount to the Revenue Commissioners.

(*b*) Where in pursuance of this section a relevant person pays any amount to the Revenue Commissioners out of a debt or an additional debt due by the relevant person to the taxpayer and, at the time of the receipt by the Revenue Commissioners of that amount, the taxpayer has paid to the Revenue Commissioners the amount or aggregate amount of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment, the first-mentioned amount shall be refunded by the Revenue Commissioners forthwith to the taxpayer.

(11) Where a notice of attachment or a notice of revocation is given to a relevant person in relation to a taxpayer, a copy of such notice shall be given by the Revenue Commissioners to the taxpayer forthwith.

(12) (*a*) Where in pursuance of this section any amount is paid to the Revenue Commissioners by a relevant person, the relevant person shall forthwith give the taxpayer concerned a notice in writing specifying the payment, its amount and the reason for which it was made.

(*b*) On the receipt by the Revenue Commissioners of an amount paid in pursuance of this section, the Revenue Commissioners shall forthwith notify the taxpayer and the relevant person in writing of such receipt.

(13) Where in pursuance of this section a relevant person pays to the Revenue Commissioners the whole or part of the amount of a debt or an additional debt due by the relevant person to a taxpayer, or any portion of such an amount, the taxpayer shall allow such payment and the relevant person shall be acquitted and discharged of the amount of the payment as if it had been paid to the taxpayer.

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(14) Where in pursuance of this section a relevant person is prohibited from making any disbursement out of a debt or an additional debt due to a taxpayer, no action shall lie against the relevant person in any court by reason of a failure to make any such disbursement.

(15) Any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply in relation to information contained in a notice of attachment.

(16) A notice of attachment in respect of a taxpayer shall not be given to a relevant person at a time when the relevant person or the taxpayer is an undischarged bankrupt or a company being wound up.

(17) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.

Payment of tax by means of donation of heritage items.

[FA95 s176; FA96 s139]

1003.—(1) (*a*) In this section—

"the Acts" means—

(i) the Tax Acts (other than *Chapter 8* of *Part 6*, *Chapter 2* of *Part 18* and *Chapter 4* of this Part),

(ii) the Capital Gains Tax Acts, and

(iii) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act,

and any instruments made thereunder;

"approved body" means—

(i) the National Archives,

(ii) the National Gallery of Ireland,

(iii) the National Library of Ireland,

(iv) the National Museum of Ireland,

(v) the Irish Museum of Modern Art, or

(vi) in relation to the offer of a gift of a particular item or collection of items, any other such body (being a body owned, or funded wholly or mainly, by the State or by any public or local authority) as may be approved, with the consent of the Minister for Finance, by the Minister for Arts, Heritage, Gaeltacht and the Islands for the purposes of this section;

"arrears of tax" means tax due and payable in accordance with any provision of the Acts (including any interest and penalties payable under any provision of the Acts in relation to such tax)—

(i) in the case of income tax, corporation tax or capital gains tax, in respect of the relevant period, or

(ii) in the case of gift tax or inheritance tax, before the commencement of the calendar year in which the relevant gift is made,

which has not been paid at the time a relevant gift is made;

''current liability'' means—

(i) in the case of income tax or capital gains tax, any liability to such tax arising in the year of assessment in which the relevant gift is made,

(ii) in the case of corporation tax, any liability to such tax arising in the accounting period in which the relevant gift is made,

(iii) in the case of gift tax or inheritance tax, any liability to such tax which becomes due and payable in the calendar year in which the relevant gift is made;

''designated officer'' means—

(i) the member of the selection committee who represents the appropriate approved body on that committee where the approved body is so represented, or

(ii) in any other case, a person nominated in that behalf by the Minister for Arts, Heritage, Gaeltacht and the Islands;

''heritage item'' has the meaning assigned to it by *subsection (2)(a)*;

''market value'' has the meaning assigned to it by *subsection (3)*;

''relevant gift'' means a gift of a heritage item to an approved body in respect of which no consideration whatever (other than relief under this section) is received by the person making the gift, either directly or indirectly, from the approved body or otherwise;

''relevant period'' means—

(i) in the case of income tax and capital gains tax, any year of assessment preceding the year in which the relevant gift is made, and

(ii) in the case of corporation tax, any accounting period preceding the accounting period in which the relevant gift is made;

''selection committee'' means a committee consisting of—

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(i) the Chairperson of the Heritage Council,

(ii) the Director of the Arts Council,

(iii) the Director of the National Archives,

(iv) the Director of the National Gallery of Ireland,

(v) the Director of the National Library of Ireland,

(vi) the Director of the National Museum of Ireland, and

(vii) the Director of the Irish Museum of Modern Art,

and includes any person duly acting in the capacity of any of those persons as a result of the person concerned being unable to fulfil his or her duties for any of the reasons set out in *paragraph (b)(ii)*;

''tax'' means income tax, corporation tax, capital gains tax, gift tax or inheritance tax, as the case may be, payable in accordance with any provision of the Acts;

''valuation date'' means the date on which an application is made to the selection committee for a determination under *subsection (2)(a)*.

(*b*) (i) The selection committee may act notwithstanding one or more vacancies among its members and may regulate its own procedure.

(ii) If and so long as a member of the selection committee is unable through illness, absence or other cause to fulfil his or her duties, a person nominated in that behalf by the member shall act as the member of the committee in the place of the member.

(2) (*a*) In this section, ''heritage item'' means any kind of cultural item, including—

(i) any archaeological item, archive, book, estate record, manuscript and painting, and

(ii) any collection of cultural items and any collection of such items in their setting,

which, on application to the selection committee in writing in that behalf by a person who owns the item or collection of items, as the case may be, is determined by the selection committee, after consideration of any evidence in relation to the matter which the person submits to the committee and after such consultation (if any) as may seem to the committee to be necessary with such person or body of persons as in the opinion of the committee may be of assistance to them, to be an item or collection of items which is—

(I) an outstanding example of the type of item involved, pre-eminent in its class, whose export from the State would constitute a diminution of the accumulated cultural heritage of Ireland, and

(II) suitable for acquisition by an approved body.

(*b*) On receipt of an application for a determination under *paragraph (a)*, the selection committee shall request the Revenue Commissioners in writing to value the item or collection of items, as the case may be, in accordance with *subsection (3)*.

(*c*) The selection committee shall not make a determination under *paragraph (a)* where the market value of the item or collection of items, as the case may be, as determined by the Revenue Commissioners in accordance with *subsection (3)*, at the valuation date—

(i) is less than £75,000, or

(ii) exceeds an amount (which shall not be less than £75,000) determined by the formula—

£750,000 – M

where M is an amount (which may be nil) equal to the market value at the valuation date of the heritage item (if any) or the aggregate of the market values at the respective valuation dates of all the heritage items (if any), as the case may be, in respect of which a determination or determinations, as the case may be, under this subsection has been made by the selection committee in any one calendar year and not revoked in that year.

(*d*) (i) An item or collection of items shall cease to be a heritage item for the purposes of this section if—

(I) the item or collection of items is sold or otherwise disposed of to a person other than an approved body,

(II) the owner of the item or collection of items notifies the selection committee in writing that it is not intended to make a gift of the item or collection of items to an approved body, or

(III) the gift of the item or collection of items is not made to an approved body within the calendar year following the year in which the determination is made under *paragraph (a)*.

(ii) Where the selection committee becomes aware, at any time within the calendar year in which a determination under *paragraph (a)* is made in respect of an item or collection of items, that *clause (I)* or *(II)* of *subparagraph (i)* applies to the item or collection of items, the selection committee may revoke its determination with effect from that time.

(3) (*a*) For the purposes of this section, the market value of any item or collection of items (in this subsection referred to

as ''the property'') shall be estimated to be the price which in the opinion of the Revenue Commissioners the property would fetch if sold in the open market on the valuation date in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property.

(*b*) The market value of the property shall be ascertained by the Revenue Commissioners in such manner and by such means as they think fit, and they may authorise a person to inspect the property and report to them the value of the property for the purposes of this section, and the person having custody or possession of the property shall permit the person so authorised to inspect the property at such reasonable times as the Revenue Commissioners consider necessary.

(*c*) Where the Revenue Commissioners require a valuation to be made by a person authorised by them, the cost of such valuation shall be defrayed by the Revenue Commissioners.

(4) Where a relevant gift is made to an approved body—

(*a*) the designated officer of that body shall give a certificate to the person who made the relevant gift, in such form as the Revenue Commissioners may prescribe, certifying the receipt of that gift and the transfer of the ownership of the heritage item the subject of that gift to the approved body, and

(*b*) the designated officer shall transmit a duplicate of the certificate to the Revenue Commissioners.

(5) Subject to this section, where a person has made a relevant gift the person shall, on submission to the Revenue Commissioners of the certificate given to the person in accordance with *subsection (4)*, be treated as having made on the date of such submission a payment on account of tax of an amount equal to the market value of the relevant gift on the valuation date.

(6) A payment on account of tax which is treated as having been made in accordance with *subsection (5)* shall be set in so far as possible against any liability to tax of the person who is treated as having made such a payment in the following order—

(*a*) firstly, against any arrears of tax due for payment by that person and against an arrear of tax for an earlier period in priority to a later period, and for this purpose the date on which an arrear of tax became due for payment shall determine whether it is for an earlier or later period, and

(*b*) only then, against any current liability of the person which the person nominates for that purpose,

and such set-off shall accordingly discharge a corresponding amount of that liability.

(7) To the extent that a payment on account of tax has not been set off in accordance with *subsection (6)*, the balance remaining shall be set off against any future liability to tax of the person who is treated as having made the payment which that person nominates for that purpose.

(8) Where a person has power to sell any heritage item in order to raise money for the payment of gift tax or inheritance tax, such person shall have power to make a relevant gift of that heritage item in or towards satisfaction of that tax and, except as regards the nature of the consideration and its receipt and application, any such relevant gift shall be subject to the same provisions and shall be treated for all purposes as a sale made in exercise of that power, and any conveyances or transfers made or purporting to be made to give effect to such a relevant gift shall apply accordingly. PT.42 S.1003

(9) A person shall not be entitled to any refund of tax in respect of any payment on account of tax made in accordance with this section.

(10) Interest shall not be payable in respect of any overpayment of tax for any period which arises directly or indirectly by reason of the set-off against any liability for that period of a payment on account of tax made in accordance with this section.

(11) Where a person makes a relevant gift and in respect of that gift is treated as having made a payment on account of tax, the person concerned shall not be allowed relief under any other provision of the Acts in respect of that gift.

(12) (*a*) The Revenue Commissioners shall as respects each year compile a list of the titles (if any), descriptions and values of the heritage items (if any) in respect of which relief under this section has been given.

(*b*) Notwithstanding any obligation as to secrecy imposed on them by the Acts or the Official Secrets Act, 1963, the Revenue Commissioners shall include in their annual report to the Minister for Finance the list (if any) referred to in *paragraph (a)* for the year in respect of which the report is made.

Unremittable income.

[ITA67 s549; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

1004.—(1) In this section, ''particular income'' means income arising outside the State, the amount of which is or is included in the amount (in this section referred to as ''the relevant amount'') on which in accordance with the Tax Acts income tax or corporation tax is computed.

(2) Subject to *subsections (3)* to *(5)*, this section shall apply where income tax or corporation tax is charged by an assessment for any period and the tax has not been paid.

(3) In any case in which, on or after the date on which the income tax or corporation tax has become payable, such proof is given to the Revenue Commissioners as satisfies them that particular income cannot, by reason of legislation in the country in which it arises or of executive action of the government of that country, be remitted to the State, the Revenue Commissioners may for the purposes of collection treat the assessment as if the relevant amount did not include the particular income, but such treatment shall terminate on the Revenue Commissioners ceasing to be so satisfied.

(4) The Revenue Commissioners may for the purposes of this section call for such information as they consider necessary.

(5) Any person who is dissatisfied with a decision of the Revenue Commissioners under *subsection (3)* may, by giving notice in writing to the Revenue Commissioners within 21 days after the notification of the decision to that person, apply to have the matter referred to

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the Appeal Commissioners as if it were an appeal against an assessment, and the provisions of the Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

Unremittable gains.

[CGTA75 s43]

1005.—(1) In this section, ''particular gains'' means chargeable gains accruing from the disposal of assets situated outside the State, the amount of which is or is included in the amount (in this section referred to as ''the relevant amount'') on which in accordance with the Capital Gains Tax Acts the tax is computed.

(2) Subject to *subsections (3)* to *(5)*, this section shall apply where capital gains tax has been charged by an assessment for the year in which the particular gains accrued and the tax has not been paid.

(3) In any case in which, on or after the date on which the capital gains tax has become payable, such proof is given to the Revenue Commissioners as satisfies them that particular gains cannot, by reason of legislation in the country in which they have accrued or of executive action of the government of that country, be remitted to the State, the Revenue Commissioners may for the purposes of collection treat the assessment as if the relevant amount did not include the particular gains, but such treatment shall terminate on the Revenue Commissioners ceasing to be so satisfied.

(4) The Revenue Commissioners may for the purposes of this section call for such information as they consider necessary.

(5) Any person who is dissatisfied with a decision of the Revenue Commissioners under *subsection (3)* may, by giving notice in writing to the Revenue Commissioners within 21 days after the notification of the decision to that person, apply to have the matter referred to the Appeal Commissioners as if it were an appeal against an assessment, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall apply accordingly with any necessary modifications.

Poundage and certain other fees due to sheriffs or county registrars.

[FA88 s71(1) and (2)(a)]

1006.—(1) In this section—

''the Acts'' means—

(*a*) the Tax Acts,

(*b*) the Capital Gains Tax Acts,

(*c*) the Value-Added Tax Act, 1972, and the enactments amending or extending that Act,

(*d*) the Capital Acquisitions Tax Act, 1976, and the enactments amending or extending that Act, and

(*e*) Part VI of the Finance Act, 1983, and the enactments amending or extending that Part,

and any instruments made thereunder;

''certificate'' means a certificate issued under *section 962*;

''county registrar'' means a person appointed to be a county registrar under section 35 of the Court Officers Act, 1926;

''defaulter'' means a person specified or certified in an execution order or certificate on whom a relevant amount specified or certified in the order or certificate is leviable;

''execution order'' has the same meaning as in the Enforcement of Court Orders Act, 1926;

''fees'' means the fees known as poundage fees payable under section 14(1) of the Enforcement of Court Orders Act, 1926, and orders made under that section for services in or about the execution of an execution order directing or authorising the execution of an order of a court by the seizure and sale of a person's property or, as may be appropriate, the fees corresponding to those fees payable under *section 962* for the execution of a certificate;

''interest on unpaid tax'' means interest which has accrued under any provision of the Acts providing for the charging of interest in respect of unpaid tax, including interest on an undercharge of tax which is attributable to fraud or neglect;

''relevant amount'' means an amount of tax or interest on unpaid tax;

''tax'' means any tax, duty, levy or charge which, in accordance with any provision of the Acts, is placed under the care and management of the Revenue Commissioners;

references, as respects an execution order, to a relevant amount include references to any amount of costs specified in the order.

(2) Where—

(*a*) an execution order or certificate specifying or certifying a defaulter and relating to a relevant amount is lodged with the appropriate sheriff or county registrar for execution,

(*b*) the sheriff or, as the case may be, the county registrar gives notice to the defaulter of the lodgment or of his or her intention to execute the execution order or certificate by seizure of the property of the defaulter to which it relates, or demands payment by the defaulter of the relevant amount, and

(*c*) the whole or part of the relevant amount is paid to the sheriff or, as the case may be, the county registrar or to the Collector-General, after the giving of that notice or the making of that demand,

then, for the purpose of the liability of the defaulter for the payment of fees and of the exercise of any rights or powers in relation to the collection of fees for the time being vested by law in sheriffs and county registrars—

(i) the sheriff or, as the case may be, the county registrar shall be deemed to have entered, in the execution of the execution order or certificate, into possession of the property referred to in *paragraph (b)*, and

(ii) the payment mentioned in *paragraph (c)* shall be deemed to have been levied, in the execution of the execution order or certificate, by the sheriff or, as the case may be, the county registrar,

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and fees shall be payable by the defaulter to such sheriff or, as the case may be, country registrar accordingly in respect of the payment mentioned in *paragraph (c)*.

PART 43

Partnerships and European Economic Interest Groupings (EEIG)

Interpretation (*Part 43*).

1007.—(1) In this Part—

[ITA67 s69; FA75 s33(2) and Sch1 PtII]

''annual payment'' means any payment from which, apart from any insufficiency of profits or gains of the persons making it, income tax is deductible under *section 237*;

''balancing charge'' means a balancing charge under *Part 9* or *Chapter 1* of *Part 29*, as the case may be;

''basis period'', in relation to a year of assessment, means the period on the profits or gains of which income tax for that year is to be finally computed under Case I of Schedule D in respect of the trade in question or, where by virtue of the Income Tax Acts the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period;

''partnership trade'' means a trade carried on by 2 or more persons in partnership;

''precedent partner'', in relation to a partnership, means the partner who, being resident in the State—

(*a*) is first named in the partnership agreement,

(*b*) if there is no agreement, is named singly or with precedence over the other partners in the usual name of the firm, or

(*c*) is the precedent acting partner, if the person named with precedence is not an acting partner,

and any reference to precedent partner shall, in a case in which no partner is resident in the State, be construed as a reference to the agent, manager or factor of the firm resident in the State;

''relevant period'', in relation to a partnership trade, means a continuous period the whole or part of which is after the 5th day of April, 1965—

(*a*) beginning at a time when either—

(i) the trade was not carried on immediately before that time by 2 or more persons in partnership, or

(ii) none of the persons then carrying on the trade in partnership was one of the persons who immediately before that time carried on the trade in partnership, and

(*b*) continuing only so long as there has not occurred a time when either—

(i) the trade is not carried on immediately after that time by 2 or more persons in partnership, or

(ii) none of the persons then carrying on the trade in partnership is one of the persons who immediately after that time carry on the trade in partnership,

subject to the condition that, in the case of any such period which apart from this condition would have begun before the 6th day of April, 1965, ''the relevant period'' shall be taken as having begun at the time, or at the last of 2 or more times, at which, a change having occurred in the partnership of persons then engaged in carrying on the trade, the persons so engaged immediately after the time were to be treated for the purposes of income tax as having set up or commenced the trade at that time.

(2) In relation to a case in which a partnership trade is from time to time during a relevant period carried on by 2 or more different partnerships of persons, any reference in this Part to the partnership shall, unless the context otherwise requires, be construed as including a reference to any partnership of persons by whom the trade has been carried on since the beginning of the relevant period and any reference to a partner shall be construed correspondingly.

(3) This Part shall, with any necessary modifications, apply in relation to professions as it applies in relation to trades.

Separate assessment of partners.

[ITA67 s71]

1008.—(1) In the case of a partnership trade, the Income Tax Acts shall, subject to this Part, apply in relation to any partner in the partnership as if for any relevant period—

(*a*) any profits or gains arising to that partner from the trade and any loss sustained by that partner in the trade were respectively profits or gains of, and loss sustained in, a trade (in this Part referred to as a ''several trade'') carried on solely by that partner, being a trade—

(i) set up or commenced at the beginning of the relevant period, or if that partner commenced to be engaged in carrying on the partnership trade at some time in the relevant period other than the beginning of that period, at the time when that partner so commenced, and

(ii) when that partner ceases to be engaged in carrying on the partnership trade either during the relevant period or at the end of that period, permanently discontinued at the time when that partner so ceases, and

(*b*) that partner had paid the part that partner was liable to bear of any annual payment paid by the partnership.

(2) (*a*) For any year or period within the relevant period the amount of the profits or gains arising to any partner from that partner's several trade, or the amount of loss sustained by that partner in that trade, shall for the purposes of *subsection (1)* be taken to be so much of the full amount of the profits or gains of the partnership trade or, as the case may be, of the full amount of the loss sustained in the partnership trade as would fall to that partner's share on an apportionment of those profits or

gains or, as the case may be, of that loss made in accordance with the terms of the partnership agreement as to the sharing of profits and losses.

(*b*) Where the year or period (in this paragraph referred to as ''the period of computation'') for which the profits or gains of, or the loss sustained in, the several trade of a partner is to be computed under this subsection is or is part of a year or period for which an account of the partnership trade has been made up, *sections 65* and *107* shall apply in relation to the partner as if an account of that partner's several trade had been made up for the period of computation.

(3) (*a*) For the purposes of *subsection (2)* and subject to *paragraph (b)*, the full amount of the profits or gains of the partnership trade for any year or period, or the full amount of the loss sustained in such trade in any year or period, shall, subject to *section 1012*, be determined by the inspector, and any such determination shall be made as it would have been made if the trade—

(i) had been set up or commenced at the beginning of the relevant period,

(ii) where the relevant period has come to an end, had been permanently discontinued at the end of that period, and

(iii) had at all times within the relevant period been carried on by one and the same person and everything done in the carrying on of the trade to or by the persons by whom it was in fact carried on had been done to or by that person.

(*b*) In a case in which the relevant period began at some time before the 6th day of April, 1965, and the trade was not treated for the purposes of income tax as having been set up or commenced at that time—

(i) the relevant period shall for the purposes of this subsection be deemed to have begun at the time at which the trade was treated for the purposes of income tax as having been set up or commenced, and

(ii) any profits or gains arising to any person from the trade, or any loss sustained by that person in the trade, for any year or period within the relevant period during which that person was engaged in the trade on that person's own account shall be deemed to be profits or gains arising to that person from, or, as the case may be, a loss sustained by that person in, a partnership trade in which that person was entitled during the year or period in question to the full amount of the profits or gains arising or was liable to bear the full amount of the loss.

(4) Where the shares to which the partners are entitled in the basis period for a year of assessment do not exhaust the profits of the trade carried on by the partnership for that period, an assessment shall be made under Case IV of Schedule D on the precedent partner in respect of the unexhausted portion of the profits and the precedent partner shall, if and when such balance is to be paid to a

person entitled to such balance, be entitled to deduct from such balance any amounts of tax which have been assessed on and paid by him or her and he or she shall be acquitted and discharged of any such amounts. PT.43 S.1008

(5) This section shall not cause any income which apart from this section is not earned income to become earned income.

1009.—(1) In this section, profits shall not be taken as including chargeable gains. Partnerships involving companies.

(2) Subject to this section, *subsections (1)*, *(2)(a)* and *(3)* of *section 1008* shall apply for the purposes of corporation tax as they apply for the purposes of income tax. [CTA76 s32 (apart from proviso to (3)(c))]

(3) Where the whole or part of an accounting period of a company is or is part of a period for which an account of a partnership trade has been made up, any necessary apportionment shall be made in computing the profits from or loss sustained in the company's several trade for the accounting period of the company.

(4) (*a*) In this subsection, ''the relevant amount'' means—

(i) where the year of assessment and the accounting period coincide, the whole amount of the appropriate share of the joint allowance or, as the case may be, the whole amount of the appropriate share of the joint charge, and

(ii) where part only of the year of assessment is within the accounting period, such portion of the appropriate share of the joint allowance or, as the case may be, such portion of the appropriate share of the joint charge as is apportioned to that part of the year of assessment which falls within the accounting period.

(*b*) Where a capital allowance equal to an appropriate share of a joint allowance would be made, if *section 21(2)* had not been enacted, in charging to income tax the profits of a company's several trade for any year of assessment, the relevant amount shall for corporation tax purposes be treated as a trading expense of the company's several trade for any accounting period of the company any part of which falls within that year of assessment.

(*c*) Where a balancing charge equal to an appropriate share of a joint charge would be made, if *section 21(2)* had not been enacted, in charging to income tax the profits of a company's several trade for any year of assessment, the relevant amount shall for corporation tax purposes be treated as a trading receipt of the company's several trade for any accounting period of the company any part of which falls within that year of assessment.

(*d*) Notwithstanding *section 1010(8)*, any reference in this subsection to a joint allowance for a year of assessment shall not include a reference to any capital allowance which is or could be brought forward from a previous year of assessment.

(5) Where under this section an amount is to be apportioned to—

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(*a*) a part of an accounting period of a company,

(*b*) a part of a period for which an account of a partnership trade has been made up, or

(*c*) a part of a year of assessment,

the apportionment shall be made by reference to the number of months or fractions of months contained in that part and in the remainder of that accounting period, period or year, as the case may be.

Capital allowances and balancing charges in partnership cases.

[ITA67 s72; FA80 s17(2)]

1010.—(1) The provisions of the Income Tax Acts relating to the making of capital allowances and balancing charges in charging the profits or gains of a trade shall, in relation to the several trade of a partner in a partnership, apply subject to this section.

(2) Where for any year of assessment a claim has been made as provided by *subsection (9)* by the precedent partner for the time being of any partnership, there shall be made to any partner in the partnership in charging the profits or gains of that partner's several trade a capital allowance in respect of any expenditure or property equal to that partner's appropriate share of any capital allowance for that year, excluding any amount carried forward from an earlier year, (in this section referred to as a ''joint allowance'') which, apart from any insufficiency of profits or gains, might have been made in respect of that expenditure or property in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged by joint assessment on the persons carrying on the trade in the year of assessment as if—

(*a*) those persons had at all times been carrying on the trade and everything done to or by their predecessors in, or in relation to, the carrying on of the trade had been done to or by them, and

(*b*) the trade had been set up or commenced at the beginning of the relevant period and, where the relevant period has come to an end, had been permanently discontinued at the end of that period.

(3) There shall be made for any year of assessment on any partner in a partnership in charging the profits or gains of that partner's several trade a balancing charge equal to that partner's appropriate share of any balancing charge (in this section referred to as a ''joint charge'') which would have been made for that year in charging the profits or gains of the partnership trade if the Income Tax Acts had provided that those profits should be charged as specified in *subsection (2)*.

(4) Where at the end of the relevant period a person or a partnership of persons succeeds to a partnership trade and any property which immediately before the succession takes place was in use for the purposes of the partnership trade and, without being sold, is immediately after the succession takes place in use for the purposes of the trade carried on by the successor or successors, *section 313(1)* shall apply as it applies where by virtue of *section 69* a trade is to be treated as discontinued.

(5) Where for a partnership trade the relevant period began at some time before the 6th day of April, 1965, and the trade was not

treated for the purposes of income tax as having been set up or commenced at that time, the relevant period shall for the purposes of *subsections (2)* and *(3)* be deemed to have begun at the time at which the trade was treated for the purposes of income tax as having been set up or commenced.

(6) (*a*) In relation to any partnership trade, the total amount of all joint allowances for any year of assessment and the total amount of all joint charges for that year shall, subject to *section 1012*, be determined by the inspector.

(*b*) Where after a determination has been made under *paragraph (a)* the inspector becomes aware of any facts or events by reference to which the determination is in his or her opinion incorrect, the inspector may from time to time and as often as appears to him or her to be necessary make a revised determination, and any such revised determination shall supersede any earlier determination and any such additional assessments or repayments of tax shall be made as may be necessary.

(7) (*a*) In this subsection, ''trading period'' means, where the relevant period begins or ends during the year of assessment for which the joint allowance or joint charge is computed, the part of that year of assessment which falls within the relevant period or, in any other case, that year of assessment.

(*b*) Subject to *paragraph (c)*, for any year of assessment the partners' appropriate shares of a joint allowance or of a joint charge shall be determined by apportioning the full amount of that allowance or charge between the partners on the same basis as a like amount of profits arising in the trading period from the partnership trade, and accruing from day to day over that period, would be apportioned in accordance with the terms of the partnership if any salary, interest on capital or other sum to which any partner was entitled without regard to the amount of the profits arising from the partnership trade had already been provided for.

(*c*) Where for any year of assessment all the partners (any deceased partner being represented by his or her legal representatives) allege, by notice in writing signed by them and sent to the inspector within 24 months after the end of the year of assessment, that hardship is caused to one or more partners by the apportionment of a joint allowance or joint charge on the basis set out in *paragraph (b)*, the Revenue Commissioners may, on being satisfied that hardship has been caused, give such relief as in their opinion is just by making a new apportionment of the joint allowance or joint charge, and any such new apportionment shall for the purposes of the Income Tax Acts apply as if it were an apportionment made under *paragraph (b)*, and such additional assessments or repayments of tax shall be made as may be necessary.

(8) (*a*) In this subsection, ''capital allowance brought forward'' means—

(i) any capital allowance or part of a capital allowance due to be made to the partnership for the year 1964-65 or any earlier year of assessment which might, if

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Part VIII of the Finance Act, 1965, had not been enacted, have been carried forward and made as a deduction in charging the profits or gains of the partnership trade for the year 1965-66, and

(ii) any capital allowance or part of a capital allowance due to be made to a partner for the year 1965-66 or a later year of assessment which but for this subsection might have been carried forward and made as a deduction in charging the profits or gains of the several trade of the partner for a year of assessment subsequent to that for which the capital allowance was computed.

(*b*) For any year of assessment the aggregate amount of all capital allowances brought forward shall for the purposes of making the assessments on the partners be deemed to be a joint allowance for that year, and *subsection (7)* shall apply accordingly.

(9) In relation to a partnership trade—

(*a*) any claim for a joint allowance for any year of assessment shall be made by the precedent partner as if it were a claim for a capital allowance to be made to that partner and shall be included in the return delivered by that partner under *section 880* in relation to that year of assessment, and

(*b*) any claim for a joint allowance shall be deemed to be a claim by every partner for a capital allowance to be made to such partner, being a capital allowance equal to such partner's appropriate share of that joint allowance.

Provision as to charges under *section 757*.

[ITA67 s74]

1011.—(1) Where for any year of assessment a charge under *section 757* (in this section referred to as a ''joint charge'') would have been made in charging the profits or gains of a partnership trade if the Income Tax Acts had provided that those profits or gains should be charged as specified in *section 1010(2)*, there shall be made on any partner in the partnership in charging the profits or gains of that partner's several trade a charge under *section 757* equal to that partner's appropriate share of the joint charge.

(2) A partner's appropriate share of a joint charge for the purposes of *subsection (1)* shall be determined in the same way as the partner's appropriate share of a joint charge within the meaning of *section 1010* is to be determined by virtue of *subsection (7)* of that section.

Modification of provisions as to appeals.

[ITA67 s73; F(MP)A68 s3(2) and Sch PtI]

1012.—(1) The inspector may give notice to the partnership concerned of any determination made by him or her under *section 1008(3)* or *1010(6)* by delivering a statement in writing of that determination to the precedent partner for the time being of the partnership, and the provisions of the Income Tax Acts relating to appeals against assessments to income tax shall, with any necessary modifications, apply in relation to any determination and any notice of a determination as if they were respectively such an assessment and notice of such an assessment.

(2) Where a determination has become final and conclusive or, in the case of a determination under *subsection (6)* of *section 1010* has

become final and conclusive subject to *paragraph (b)* of that subsection, no question as to its correctness shall be raised on the hearing or on the rehearing of an appeal by any partner either against an assessment in respect of the profits or gains of that partner's several trade or against a determination by the inspector on a claim under *section 381*.

(3) Where on any appeal mentioned in *subsection (2)* any question arises as to an apportionment to be made under *section 1008(2)* or *1010(7)* and it appears that the question is material as respects the liability to income tax (for whatever year of assessment) of 2 or more persons, all those persons shall be notified of the time and place of the hearing and shall be entitled to appear and be heard by the Appeal Commissioners or to make representations to them in writing.

Limited partnerships.

[FA86 s46(1) to (3) and (6), FA92 s23; FA94 s29]

1013.—(1) In this section—

''the aggregate amount'', in relation to a trade, means—

(*a*) in the case of an individual, the aggregate of amounts given or allowed to the individual at any time under any of the specified provisions—

(i) in respect of a loss sustained by him or her in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in any relevant year of assessment, or

(ii) as an allowance to be made to him or her for any relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

and

(*b*) in the case of a company, the aggregate of amounts given or allowed to the company (in this section referred to as ''the partner company'') or to another company at any time under any of the specified provisions—

(i) in respect of a loss incurred by the partner company in the trade, or of charges paid by it or another company by reason of its participation in the trade, in any relevant accounting period, or

(ii) as an allowance to be made to the partner company for any relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

''limited partner'', in relation to a trade, means—

(*a*) a person carrying on the trade as a limited partner in a limited partnership registered under the Limited Partnerships Act, 1907,

(*b*) a person carrying on the trade as a general partner in a partnership who is not entitled to take part in the management of the trade but is entitled to have the person's

liabilities, or those liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person, or

(*c*) a person who carries on the trade jointly with others and, under the law of any territory outside the State, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

''relevant accounting period'' means an accounting period of the partner company which ends on or after the specified date and at any time during which it carried on the trade as a limited partner;

''the relevant time'' means—

(*a*) in the case of an individual, the end of the relevant year of assessment in which the loss is sustained or the interest is paid, or for which the allowance is to be made (except that where the individual ceased to carry on the trade during that year of assessment it is the time when he or she so ceased), and

(*b*) in the case of a partner company, the end of the relevant accounting period in which the loss is incurred or the charges are paid, or for which the allowance is to be made (except that where the partner company ceases to carry on the trade during that accounting period it is the time when the partner company so ceased);

''relevant year of assessment'' means a year of assessment which ends after the specified date and at any time during which the individual carried on the trade as a limited partner;

''the specified date'' means the 22nd day of May, 1985;

''the specified provisions'' means—

(*a*) in the case of an individual, *sections 245* to *255*, *305* and *381*, and

(*b*) in the case of a company, *sections 243*, *308(4)* and *396(2)* and *subsections (1)*, *(2)* and *(6)* of *section 420*.

(2) (*a*) Where, in the case of an individual who is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—

(i) in respect of a loss sustained by the individual in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in a relevant year of assessment, or

(ii) as an allowance to be made to the individual for a relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

such an amount may be given or allowed—

(I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against income consisting of profits or gains arising from the trade, or

(II) as respects such a contribution made on or after the 24th day of April, 1992, only against income consisting of profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the amount of his or her contribution to the trade at the relevant time.

(*b*) Where, in the case of a partner company which is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—

(i) in respect of a loss sustained by the partner company in the trade, or of charges paid by the partner company or another company by reason of its participation in the trade, in a relevant accounting period, or

(ii) as an allowance to be made to the partner company for a relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade,

such an amount may be given or allowed to the partner company—

(I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against profits or gains arising from the trade, or to another company, or

(II) as respects such a contribution made on or after the 24th day of April, 1992, only against profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the partner company's contribution to the trade at the relevant time.

(3) (*a*) A person's contribution to a trade at any time shall be the aggregate of—

(i) the amount which the person has contributed to the trade as capital and has not subsequently, either directly or indirectly, drawn out or received back from the partnership or from a person connected with the partnership (other than anything, in relation to expenditure which the person has incurred on behalf of the partnership trade or in providing facilities for the partnership trade, which the person is or may be entitled so to draw out or receive back at any time when the person carries on the trade as a

limited partner or which the person is or may be entitled to require another person to reimburse the person), and

(ii) the amount of any profits or gains of the trade to which the person is entitled but which the person has not received in money or money's worth.

(*b*) A person shall for the purposes of *paragraph (a)* be treated as having received back an amount contributed by the person to the partnership if—

(i) the person received consideration of that amount or value for the sale of the person's interest, or any part of the person's interest, in the partnership,

(ii) the partnership or any person connected with the partnership repays that amount of a loan or an advance from the person, or

(iii) the person receives that amount or value for assigning any debt due to the person from the partnership or from any person connected with the partnership.

(4) (*a*) This subsection shall apply, in relation to an amount given or allowed under any of the specified provisions, as respects a contribution by a partner to the trade of the partnership made on or after the 11th day of April, 1994.

(*b*) For the purposes of this section, where in connection with the making of a contribution to a partnership trade by a general partner in the partnership—

(i) there exists any agreement, arrangement, scheme or understanding under which the partner is required to cease to be a partner in the partnership at any time before the partner is entitled to receive back from the partnership the full amount of the partner's contribution to the trade, or

(ii) by virtue of any agreement, arrangement, scheme or understanding—

(I) any asset owned by the partner is exempt from execution on goods or from a process or mode of enforcement of a debt of the partner or the partnership, or

(II) any other limit or restriction is placed on the creditor's entitlement to recover any such debt from the partner,

the partner shall be treated as a person who is not entitled to take part in the management of the trade but is entitled to have the person's liabilities, or the person's liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person.

(*c*) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 11th day of April, 1994, any amount which would not otherwise have been given

or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that *paragraph (a)* had not been enacted shall be treated as given or allowed as respects such a contribution.

(5) (*a*) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 24th day of April, 1992, any amount which would not otherwise have been given or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that *paragraphs (a)(II)* and *(b)(II)* of *subsection (2)* had not been enacted shall be treated as given or allowed as respects such a contribution.

(*b*) Notwithstanding *paragraph (a)* and *paragraphs (a)(II)* and *(b)(II)* of *subsection (2)*, this section shall apply in so far as the trade of a limited partnership consists of the management and letting of holiday cottages within the meaning of *section 268*, where—

(i) a written contract for the construction of the holiday cottages was signed and construction work had commenced before the 24th day of April, 1992, and

(ii) the construction work is completed before the 6th day of April, 1993,

as if references to on or after the 24th day of April, 1992, were references to on or after the 1st day of September, 1992.

Tax treatment of profits, losses and capital gains arising from activities of a European Economic Interest Grouping (EEIG).

[FA90 s29(1), (2), (5) and (6)]

1014.—(1) In this section, ''grouping'' means a European Economic Interest Grouping formed on the terms, in the manner and with the effects laid down in—

(*a*) Council Regulation (EEC) No 2137/85 of 25 July 1985[1] on the European Economic Interest Grouping (EEIG), and

(*b*) the European Communities (European Economic Interest Groupings) Regulations, 1989 (S.I. No. 191 of 1989),

and references to members of a grouping shall be construed accordingly.

(2) Notwithstanding anything in the Tax Acts or in the Capital Gains Tax Acts, a grouping shall be neither—

(*a*) charged to income tax, corporation tax or capital gains tax, as the case may be, in respect of profits or gains or chargeable gains arising to it, nor

(*b*) entitled to relief for a loss sustained by it,

and any assessment required to be made on such profits or gains or chargeable gains, and any relief for a loss, shall as appropriate be made on and allowed to the members of a grouping in accordance with this section.

(3) This Part (other than *sections 1009*, *1010(8)* and *1013*) and *sections 30* and *913(7)* shall apply with any necessary modifications to the activities of a grouping in the same manner as they apply to a trade or profession carried on by 2 or more persons in partnership.

[1]O.J. L 119, 31.07.1985 p.1.

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(4) In particular but without prejudice to the generality of *subsection (3)*, the provisions mentioned in that subsection shall in their application for the purposes of this section apply as if—

(*a*) references to a partnership agreement were references to the contract forming or providing for the formation of a grouping,

(*b*) references to a partner were references to a member of a grouping, and

(*c*) anything done or required to be done by the precedent acting partner was done or required to be done by the grouping.

PART 44

Married, Separated and Divorced Persons

CHAPTER 1

Income tax

Interpretation (*Chapter 1*).

[ITA67 s192; FA80 s18]

1015.—(1) In this Chapter, ''the inspector'', in relation to a notice, means any inspector who might reasonably be considered by the person giving notice to be likely to be concerned with the subject matter of the notice or who declares himself or herself ready to accept the notice.

(2) A wife shall be treated for income tax purposes as living with her husband unless either—

(*a*) they are separated under an order of a court of competent jurisdiction or by deed of separation, or

(*b*) they are in fact separated in such circumstances that the separation is likely to be permanent.

(3) (*a*) In this Chapter, references to the income of a wife include references to any sum which apart from this Chapter would be included in computing her total income, and this Chapter shall apply in relation to any such sum notwithstanding that some enactment (including, except in so far as the contrary is expressly provided, an enactment passed after the passing of this Act) requires that that sum should not be treated as income of any person other than her.

(*b*) In the Income Tax Acts, a reference to a person who has duly elected to be assessed to tax in accordance with a particular section includes a reference to a person who is deemed to have elected to be assessed to tax in accordance with that section, and any reference to a person who is assessed to tax in accordance with *section 1017* for a year of assessment includes a reference to a case where the person and his or her spouse are assessed to tax for that year in accordance with *section 1023*.

(4) Any notice required to be served under any section in this Chapter may be served by post.

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Assessment as single persons.

1016.—(1) Subject to *subsection (2)*, in any case in which a wife is treated as living with her husband, income tax shall be assessed, charged and recovered, except as is otherwise provided by the Income Tax Acts, on the income of the husband and on the income of the wife as if they were not married.

[ITA67 s193; FA80 s18]

(2) Where an election under *section 1018* has effect in relation to a husband and wife for a year of assessment, this section shall not apply in relation to that husband and wife for that year of assessment.

Assessment of husband in respect of income of both spouses.

1017.—(1) Where in the case of a husband and wife an election under *section 1018* to be assessed to tax in accordance with this section has effect for a year of assessment—

[ITA67 s194; FA80 s18]

(*a*) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,

(*b*) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and

(*c*) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman's husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

(2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.

Election for assessment under *section 1017*.

1018.—(1) A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with *section 1017* and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

[ITA67 s195; FA80 s18]

(2) Where an election is made under *subsection (1)* in respect of a year of assessment, the election shall have effect for that year and for each subsequent year of assessment.

(3) Notwithstanding *subsections (1)* and *(2)*, either the husband or the wife may, in relation to a year of assessment, by notice in writing given to the inspector before the end of the year, withdraw the election in respect of that year and, on the giving of that notice, the election shall not have effect for that year or for any subsequent year of assessment.

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(4) (*a*) A husband and his wife, where the wife is living with the husband and where an election under *subsection (1)* has not been made by them for a year of assessment (or for any prior year of assessment) shall be deemed to have duly elected to be assessed to tax in accordance with *section 1017* for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with *section 1016*.

(*b*) Where a husband or his wife has duly given notice under *paragraph (a)*, that paragraph shall not apply in relation to that husband and wife for the year of assessment for which the notice was given or for any subsequent year of assessment until the year of assessment in which the notice is withdrawn, by the person who gave it, by further notice in writing to the inspector.

Assessment of wife in respect of income of both spouses.

[ITA67 s195B; FA93 s10(1)]

1019.—(1) In this section—

''the basis year'', in relation to a husband and wife, means the year of marriage or, if earlier, the latest year of assessment preceding that year of marriage for which details of the total incomes of both the husband and the wife are available to the inspector at the time they first elect, or are first deemed to have duly elected, to be assessed to tax in accordance with *section 1017*;

''year of marriage'', in relation to a husband and wife, means the year of assessment in which their marriage took place.

(2) *Subsection (3)* shall apply for a year of assessment where, in the case of a husband and wife who are living together—

(*a*) (i) an election (including an election deemed to have been duly made) by the husband and wife to be assessed to income tax in accordance with *section 1017* has effect in relation to the year of assessment, and

(ii) the husband and the wife by notice in writing jointly given to the inspector before the 6th day of July in the year of assessment elect that the wife should be assessed to income tax in accordance with *section 1017*,

or

(*b*) (i) the year of marriage is the year 1993-94 or a subsequent year of assessment,

(ii) not having made an election under *section 1018(1)* to be assessed to income tax in accordance with *section 1017*, the husband and wife have been deemed for that year of assessment, in accordance with *section 1018(4)*, to have duly made such an election, but have not made an election in accordance with *paragraph (a)(ii)* for that year, and

(iii) the inspector, to the best of his or her knowledge and belief, considers that the total income of the wife for the basis year exceeded the total income of her husband for that basis year.

(3) Where this subsection applies for a year of assessment, the wife shall be assessed to income tax in accordance with *section 1017* for that year, and accordingly references in *section 1017* or in any other provision of the Income Tax Acts, however expressed—

(*a*) to a husband being assessed, assessed and charged or chargeable to income tax for a year of assessment in respect of his own total income (if any) and his wife's total income (if any), and

(*b*) to income of a wife being deemed for income tax purposes to be that of her husband,

shall, subject to this section and the modifications set out in *subsection (6)* and any other necessary modifications, be construed respectively for that year of assessment as references—

(i) to a wife being assessed, assessed and charged or chargeable to income tax in respect of her own total income (if any) and her husband's total income (if any), and

(ii) to the income of a husband being deemed for income tax purposes to be that of his wife.

(4) (*a*) Where in accordance with *subsection (3)* a wife is by virtue of *subsection (2)(b)* to be assessed and charged to income tax in respect of her total income (if any) and her husband's total income (if any) for a year of assessment—

(i) in the absence of a notice given in accordance with *subsection (1)* or *(4)(a)* of *section 1018* or an application made under *section 1023*, the wife shall be so assessed and charged for each subsequent year of assessment, and

(ii) any such charge shall apply and continue to apply notwithstanding that her husband's total income for the basis year may have exceeded her total income for that year.

(*b*) Where a notice under *section 1018(4)(a)* or an application under *section 1023* is withdrawn and, but for the giving of such a notice or the making of such an application in the first instance, a wife would have been assessed to income tax in respect of her own total income (if any) and the total income (if any) of her husband for the year of assessment in which the notice was given or the application was made, as may be appropriate, then, in the absence of an election made in accordance with *section 1018(1)* (not being such an election deemed to have been duly made in accordance with *section 1018(4)*), the wife shall be so assessed to income tax for the year of assessment in which that notice or application is withdrawn and for each subsequent year of assessment.

(5) Where an election is made in accordance with *subsection (2)(a)(ii)* for a year of assessment, the election shall have effect for that year and each subsequent year of assessment unless it is withdrawn by further notice in writing given jointly by the husband and the wife to the inspector before the 6th day of July in a year of assessment and the election shall not then have effect for the year for which the further notice is given or for any subsequent year of assessment.

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(6) For the purposes of the other provisions of this section and as the circumstances may require—

(*a*) a reference in the Income Tax Acts, however expressed, to an individual or a claimant, being a man, a married man or a husband shall be construed respectively as a reference to a woman, a married woman or a wife, and a reference in those Acts, however expressed, to a woman, a married woman or a wife shall be construed respectively as a reference to a man, a married man or a husband, and

(*b*) any provision of the Income Tax Acts shall, in so far as it may relate to the treatment of any husband and wife for the purposes of those Acts, be construed so as to give effect to this section.

Special provisions relating to year of marriage.

[ITA67 s195A(1) to (6); FA83 s6; FA96 s132(1) and Sch5 PtI par1(8)]

1020.—(1) In this section—

''income tax month'' means a month beginning on the 6th day of any of the months of April to March in any year of assessment;

''year of marriage'', in relation to a husband and wife, means the year of assessment in which their marriage took place.

(2) *Section 1018* shall not apply in relation to a husband and his wife for the year of marriage.

(3) Where, on making a claim in that behalf, a husband and his wife prove that the amount equal to the aggregate of the income tax paid and payable by the husband on his total income for the year of marriage and the income tax paid and payable by his wife on her total income for the year of marriage is in excess of the income tax which would have been payable by the husband on his total income and the total income of his wife for the year of marriage if—

(*a*) he had been charged to income tax for the year of marriage in accordance with *section 1017*, and

(*b*) he and his wife had been married to each other throughout the year of marriage,

they shall be entitled, subject to *subsection (4)*, to repayment of income tax of an amount determined by the formula—

$$A \times \frac{B}{12}$$

where—

A is the amount of the aforementioned excess, and

B is the number of income tax months in the period between the date on which the marriage took place and the end of the year of marriage, part of an income tax month being treated for this purpose as an income tax month in a case where the period consists of part of an income tax month or of one or more income tax months and part of an income tax month.

(4) Any repayment of income tax under *subsection (3)* shall be allocated to the husband and to the wife concerned in proportion to the amounts of income tax paid and payable by them, having regard

to *subsection (2)*, on their respective total incomes for the year of marriage. PT.44 S.1020

(5) Any claim for a repayment of income tax under *subsection (3)* shall be made in writing to the inspector after the end of the year of marriage and shall be made by the husband and wife concerned jointly.

(6) (*a*) *Subsections (1)* and *(2)* of *section 459* and *section 460* shall apply to a repayment of income tax under this section as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to *section 458*.

(*b*) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall, with any necessary modifications, apply in relation to a repayment of tax under this section.

Repayment of tax in case of certain husbands and wives.

[ITA67 s195C; FA93 s10(1)]

1021.—(1) This section shall apply for a year of assessment in the case of a husband and wife one of whom is assessed to income tax for the year of assessment in accordance with *section 1017* and to whom *section 1023* does not apply for that year.

(2) Where for a year of assessment this section applies in the case of a husband and wife, any repayment of income tax to be made in respect of the aggregate of the net tax deducted or paid under any provision of the Tax Acts (including a tax credit in respect of a distribution from a company resident in the State) in respect of the total income (if any) of the husband and of the total income (if any) of the wife shall be allocated to the husband and the wife concerned in proportion to the net amounts of tax so deducted or paid in respect of their respective total incomes; but this subsection shall not apply where a repayment, which but for this subsection would not be made to a spouse, is less than £20.

(3) Notwithstanding *subsection (2)*, where the inspector, having regard to all the circumstances of a case, is satisfied that a repayment or a greater part of a repayment of income tax arises by reason of some allowance or relief which, if *sections 1023* and *1024* had applied for the year of assessment, would have been allowed to one spouse only, the inspector may make the repayment to the husband and the wife in such proportions as the inspector considers just and reasonable.

Special provisions relating to tax on wife's income.

[ITA67 s196; FA80 s18]

1022.—(1) Where—

(*a*) an assessment to income tax (in this section referred to as ''the original assessment'') has been made for any year of assessment on a man, or on a man's trustee, guardian or committee, or on a man's executors or administrators,

(*b*) the Revenue Commissioners are of the opinion that, if an application for separate assessment under *section 1023* had been in force with respect to that year of assessment, an assessment in respect of or of part of the same income would have been made on, or on the trustee, guardian or committee of, or on the executors or administrators of, a woman who is the man's wife or was his wife in that year of assessment, and

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(*c*) the whole or part of the amount payable under the original assessment has remained unpaid at the expiration of 28 days from the time when it became due,

the Revenue Commissioners may give to that woman, or, if she is dead, to her executors or administrators, or, if an assessment referred to in *paragraph (b)* could in the circumstances referred to in that paragraph have been made on her trustee, guardian or committee, to her or to her trustee, guardian or committee, a notice stating—

(i) particulars of the original assessment and of the amount remaining unpaid under that assessment, and

(ii) to the best of their judgment, particulars of the assessment which would have been so made,

and requiring the person to whom the notice is given to pay the amount which would have been payable under the last-mentioned assessment if it conformed with those particulars, or the amount remaining unpaid under the original assessment, whichever is the less.

(2) The same consequences as respects—

(*a*) the imposition of a liability to pay, and the recovery of, the tax with or without interest,

(*b*) priority for the tax in bankruptcy or in the administration of the estate of a deceased person,

(*c*) appeals to the Appeal Commissioners, the rehearing of such appeals and the stating of cases for the opinion of the High Court, and

(*d*) the ultimate incidence of the liability imposed,

shall follow on the giving of a notice under *subsection (1)* to a woman, or to her trustee, guardian or committee, or to her executors or administrators, as would have followed on the making on her, or on her trustee, guardian or committee, or on her executors or administrators, as the case may be, of an assessment referred to in *subsection (1)(b)*, being an assessment which—

(i) was made on the day of the giving of the notice,

(ii) charged the same amount of tax as is required to be paid by the notice,

(iii) fell to be made and was made by the authority who made the original assessment, and

(iv) was made by that authority to the best of that authority's judgment,

and the provisions of the Income Tax Acts relating to the matters specified in *paragraphs (a)* to *(d)* shall, with the necessary modifications, apply accordingly.

(3) Where a notice is given under *subsection (1)*, tax up to the amount required to be paid by the notice shall cease to be recoverable under the original assessment and, where the tax charged by the original assessment carried interest under *section 1080*, such adjustment shall be made of the amount payable under that section in

relation to that assessment and such repayment shall be made of any amounts previously paid under that section in relation to that assessment as are necessary to secure that the total sum, if any, paid or payable under that section in relation to that assessment is the same as it would have been if the amount which ceases to be recoverable had never been charged. Pt.44 S.1022

(4) Where the amount payable under a notice under *subsection (1)* is reduced as the result of an appeal or of a case stated for the opinion of the High Court—

(*a*) the Revenue Commissioners shall, if having regard to that result they are satisfied that the original assessment was excessive, cause such relief to be given by means of repayment or otherwise as appears to them to be just; but

(*b*) subject to any relief so given, a sum equal to the reduction in the amount payable under the notice shall again become recoverable under the original assessment.

(5) The Revenue Commissioners and the inspector or other proper officer shall have the like powers of obtaining information with a view to the giving of, and otherwise in connection with, a notice under *subsection (1)* as they would have had with a view to the making of, and otherwise in connection with, an assessment referred to in *subsection (1)(b)* if the necessary conditions had been fulfilled for the making of such an assessment.

(6) Where a woman dies who at any time before her death was a wife living with her husband, he or, if he is dead, his executors or administrators may, not later than 2 months from the date of the grant of probate or letters of administration in respect of her estate or, with the consent of her executors or administrators, at any later date, give to her executors or administrators and to the inspector a notice in writing declaring that, to the extent permitted by this section, he disclaims or they disclaim responsibility for unpaid income tax in respect of all income of hers for any year of assessment or part of a year of assessment, being a year of assessment or part of a year of assessment for which any income of hers was deemed to be his income and in respect of which he was assessed to tax under *section 1017*.

(7) A notice given to the inspector pursuant to *subsection (6)* shall be deemed not to be a valid notice unless it specifies the names and addresses of the woman's executors or administrators.

(8) Where a notice under *subsection (6)* has been given to a woman's executors or administrators and to the inspector—

(*a*) it shall be the duty of the Revenue Commissioners and the Appeal Commissioners to exercise such powers as they may then or thereafter be entitled to exercise under *subsections (1)* to *(5)* in connection with any assessment made on or before the date when the giving of that notice is completed, being an assessment in respect of any of the income to which that notice relates, and

(*b*) the assessments (if any) to tax which may be made after that date shall, in all respects and in particular as respects the persons assessable and the tax payable, be the assessments which would have been made if—

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(i) an application for separate assessment under *section 1023* had been in force in respect of the year of assessment in question, and

(ii) all assessments previously made had been made accordingly.

Application for separate assessments.

[ITA67 s197; FA80 s18; FA97 s146(1) and Sch9 PtI par1(12)]

1023.—(1) In this section and in *section 1024*, ''personal reliefs'' means relief under any of the provisions specified in the Table to *section 458*, apart from relief under *sections 462* and *463*.

(2) Where an election by a husband and wife to be assessed to income tax in accordance with *section 1017* has effect in relation to a year of assessment and, in relation to that year of assessment, an application is made for the purpose under this section in such manner and form as may be prescribed by the Revenue Commissioners, either by the husband or by the wife, income tax for that year shall be assessed, charged and recovered on the income of the husband and on the income of the wife as if they were not married and the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of tax shall, except where otherwise provided by those Acts, apply as if they were not married except that—

(*a*) the total deductions from total income allowed to the husband and wife by means of personal reliefs shall be the same as if the application had not had effect with respect to that year,

(*b*) the total tax payable by the husband and wife for that year shall be the same as the total tax which would have been payable by them if the application had not had effect with respect to that year, and

(*c*) *section 1024* shall apply.

(3) An application under this section in respect of a year of assessment may be made—

(*a*) in the case of persons marrying during the course of that year, before the 6th day of July in the following year, and

(*b*) in any other case, within 6 months before the 6th day of July in that year.

(4) Where an application is made under *subsection (2)*, that subsection shall apply not only for the year of assessment for which the application was made, but also for each subsequent year of assessment; but, in relation to a subsequent year of assessment, the person who made the application may, by notice in writing given to the inspector before the 6th day of July in that year, withdraw that election and, on the giving of that notice, *subsection (2)* shall not apply for the year of assessment in relation to which the notice was given or any subsequent year of assessment.

(5) A return of the total incomes of the husband and of the wife may be made for the purposes of this section either by the husband or by the wife but, if the Revenue Commissioners are not satisfied with any such return, they may require a return to be made by the wife or by the husband, as the case may be.

(6) The Revenue Commissioners may by notice require returns for the purposes of this section to be made at any time.

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Method of apportioning reliefs and charging tax in cases of separate assessments.

[ITA67 s198; FA80 s18; FA81 s5; FA92 s2(2)(a); FA97 s8(9) and s146(1) and Sch9 PtI par1(13)]

1024.—(1) This section shall apply where pursuant to an application under *section 1023* a husband and wife are assessed to tax for a year of assessment in accordance with that section.

(2) (*a*) Subject to *subsection (3)*, the benefit flowing from the personal reliefs for a year of assessment may be given either by means of reduction of the amount of the tax to be paid or by repayment of any excess of tax which has been paid, or by both of those means, as the case requires, and shall be allocated to the husband and the wife, in so far as it flows from—

(i) relief under *sections 244*, *328*, *337*, *349*, *364* and *371*, in the proportions in which they incurred the expenditure giving rise to the relief;

(ii) relief under *sections 461*, *464*, *465* (other than *subsection (3)*) and *468*, in the proportions of one-half and one-half;

(iii) relief in respect of a child under *section 465(3)* and relief in respect of a dependent relative under *section 466*, to the husband or to the wife according as he or she maintains the child or dependent relative;

(iv) relief under *section 467*, in the proportions in which they bear the cost of employing the person in respect of whom the relief is given;

(v) relief under *section 469*, in the proportions in which they bore the expenditure giving rise to the relief;

(vi) relief under *sections 470* and *473*, to the husband or to the wife according as he or she made the payment giving rise to the relief;

(vii) relief under *section 471*, in the proportions in which they incurred the expenditure giving rise to the relief;

(viii) relief under *section 472*, to the husband or to the wife according as the emoluments from which the deduction under that section is made are emoluments of the husband or of the wife;

(ix) relief under *sections 474*, *475*, *476*, *477*, *478* and *479*, in the proportions in which they incurred the expenditure giving rise to the relief;

(x) relief under *section 481*, in the proportions in which they made the relevant investment giving rise to the relief;

(xi) relief under *Part 16*, in the proportions in which they subscribed for the eligible shares giving rise to the relief;

(xii) relief under *paragraphs 12* and *20* of *Schedule 32*, in the proportions in which they incurred the expenditure giving rise to the relief.

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(*b*) Any reduction of income tax to be made under *section 187(4)(b)* or *188(5)* for a year of assessment shall be allocated to the husband and to the wife in proportion to the amounts of income tax which but for *section 187(4)(b)* or *188(5)* would have been payable by the husband and by the wife for that year.

(*c*) Subject to *subsection (4)*, *section 15* shall apply for the year of assessment in relation to each of the spouses concerned as if the part of the taxable income specified in *Part 2* of the Table to that section which is to be charged to tax at the standard rate were one-half of the part so specified.

(3) Where the amount of relief allocated to the husband under *subsection (2)(a)* exceeds the income tax chargeable on his income for the year of assessment, the balance shall be applied to reduce the income tax chargeable on the income of the wife for that year, and where the amount of relief allocated to the wife under that paragraph exceeds the income tax chargeable on her income for the year of assessment, the balance shall be applied to reduce the income tax chargeable on the income of the husband for that year.

(4) Where the part of the taxable income of a spouse chargeable to tax in accordance with *subsection (2)(c)* at the standard rate is less than that of the other spouse and is less than the part of taxable income specified in *column (1)* of *Part 2* of the Table to *section 15* (in this subsection referred to as ''the appropriate part'') in respect of which the first-mentioned spouse is so chargeable to tax at that rate, the part of taxable income of the other spouse which by virtue of that subsection is to be charged to tax at that rate shall be increased by the amount by which the taxable income of the first-mentioned spouse chargeable to tax at that rate is less than the appropriate part.

Maintenance in case of separated spouses.

[FA83 s3; FA96 s132(1) and Sch5 PtI par13(1)]

1025.—(1) In this section—

''maintenance arrangement'' means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of—

(*a*) the dissolution or annulment of a marriage, or

(*b*) such separation of the parties to a marriage as is referred to in *section 1015(2)*,

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

''payment'' means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to a deduction under *section 465*.

(2) (*a*) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for

the benefit of his or her child, or for the benefit of the other party to the marriage, being payments—

(i) which are made at a time when the wife is not living with the husband,

(ii) the making of which is legally enforceable, and

(iii) which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur—

(I) the maintenance arrangement is replaced by another maintenance arrangement or is varied, and

(II) both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(*b*) For the purposes of this section and of *section 1026* but subject to *paragraph (c)*, a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(*c*) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to *section 1026*, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage—

(*a*) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

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(*b*) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(*c*) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child—

(*a*) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(*b*) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(*c*) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(*d*) for the purposes of *section 465(7)*, the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that other party on the maintenance of the child.

(5) (*a*) *Subsections (1)* and *(2)* of *section 459* and *section 460* shall apply to a deduction under *subsection (3)(c)* as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to *section 458*.

(*b*) *Subsections (3)* and *(4)* of *section 459* and *paragraph 8* of *Schedule 28* shall, with any necessary modifications, apply in relation to a deduction under *subsection (3)(c)*.

Separated and divorced persons: adaptation of provisions relating to married persons.

[FA83 s4; FA97 s5(a)]

1026.—(1) Where a payment to which *section 1025* applies is made in a year of assessment by a party to a marriage (being a marriage which has not been dissolved or annulled) and both parties to the marriage are resident in the State for that year, *section 1018* shall apply in relation to the parties to the marriage for that year of assessment as if—

(*a*) in *subsection (1)* of that section ", where the wife is living with the husband," were deleted, and

(*b*) *subsection (4)* of that section were deleted.

(2) Where by virtue of *subsection (1)* the parties to a marriage elect as provided for in *section 1018(1)*, then, as respects any year of assessment for which the election has effect— PT.44 S.1026

(*a*) subject to *subsection (1)* and *paragraphs (b)* and *(c)*, the Income Tax Acts shall apply in the case of the parties to the marriage as they apply in the case of a husband and wife who have elected under *section 1018(1)* and whose election has effect for that year of assessment,

(*b*) the total income or incomes of the parties to the marriage shall be computed for the purposes of the Income Tax Acts as if any payments to which *section 1025* applies made in that year of assessment by one party to the marriage for the benefit of the other party to the marriage had not been made, and

(*c*) income tax shall be assessed, charged and recovered on the total income or incomes of the parties to the marriage as if an application under *section 1023* had been made by one of the parties and that application had effect for that year of assessment.

(3) Notwithstanding *subsection (1)*, where a payment to which *section 1025* applies is made in a year of assessment by a spouse who is a party to a marriage, that has been dissolved, for the benefit of the other spouse, and—

(*a*) the dissolution was under either—

(i) section 5 of the Family Law (Divorce) Act, 1996, or

(ii) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State,

(*b*) both spouses are resident in the State for tax purposes for that year of assessment, and

(*c*) neither spouse has entered into another marriage,

then, *subsections (1)* and *(2)* shall, with any necessary modifications, apply in relation to the spouses for that year of assessment as if their marriage had not been dissolved.

1027.—Payment of money pursuant to—

Payments pursuant to certain orders under Judicial Separation and Family Law Reform Act, 1989, Family Law Act, 1995, and Family Law (Divorce) Act, 1996, to be made without deduction of income tax.

(*a*) an order under Part II of the Judicial Separation and Family Law Reform Act, 1989,

(*b*) an order under the Family Law Act, 1995 (other than section 12 of that Act), and

(*c*) an order under the Family Law (Divorce) Act, 1996 (other than section 17 of that Act),

shall be made without deduction of income tax.

[Judicial Separation and Family Law Reform Act, 1989, s26; Family Law (Divorce) Act, 1996, s31; Family Law Act, 1995, s37]

Married persons.

[CGTA75 s13; FA80 s61(b); FA92 s59]

1028.—(1) Subject to this section, the amount of capital gains tax on chargeable gains accruing to a married woman in a year of assessment or part of a year of assessment during which she is a married woman living with her husband shall be assessed and charged on the husband and not otherwise; but this subsection shall not affect the amount of capital gains tax chargeable on the husband apart from this subsection or result in the additional amount of capital gains tax charged on the husband by virtue of this subsection being different from the amount which would otherwise have remained chargeable on the married woman.

(2) (*a*) Subject to *paragraph (b)*, *subsection (1)* shall not apply in relation to a husband and wife in any year of assessment where, before the 6th day of July in the year following that year of assessment, an application is made by either the husband or wife that *subsection (1)* shall not apply, and such an application duly made shall have effect not only as respects the year of assessment for which it is made but also for any subsequent year of assessment.

(*b*) Where the applicant gives, for any subsequent year of assessment, a notice withdrawing an application under *paragraph (a)*, that application shall not have effect with respect to the year for which the notice is given or any subsequent year; but such notice of withdrawal shall not be valid unless it is given before the 6th day of July in the year following the year of assessment for which the notice is given.

(3) In the case of a woman who during a year of assessment or part of a year of assessment is a married woman living with her husband, any allowable loss which under *section 31* would be deductible from the chargeable gains accruing in that year of assessment to the one spouse but for an insufficiency of chargeable gains shall for the purposes of that section be deductible from chargeable gains accruing in that year of assessment to the other spouse; but this subsection shall not apply in relation to losses accruing in a year of assessment to either spouse where an application that this subsection shall not apply is made by the husband or the wife before the 6th day of July in the year following that year of assessment.

(4) Where apart from *subsection (1)* the amount on which an individual is chargeable to capital gains tax under *section 31* for a year of assessment (in this subsection referred to as ''the first-mentioned amount'') is less than £1,000 and the spouse of the individual (being, at any time during that year of assessment, a married woman living with her husband, or that husband) is apart from *subsection (1)* chargeable to capital gains tax on any amount for that year, *section 601(1)* shall apply in relation to the spouse as if the sum of £1,000 mentioned in that section were increased by an amount equal to the difference between the first-mentioned amount and £1,000.

(5) Where in any year of assessment in which or in part of which the married woman is a married woman living with her husband, the husband disposes of an asset to the wife, or the wife disposes of an asset to the husband, both shall be treated as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal; but this subsection

shall not apply if until the disposal the asset formed part of trading stock of a trade carried on by the spouse making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(6) *Subsection (5)* shall apply notwithstanding *section 596* or any other provision of the Capital Gains Tax Acts fixing the amount of the consideration deemed to be given on a disposal or acquisition.

(7) Where *subsection (5)* is applied in relation to a disposal of an asset by a husband to his wife, or by his wife to him, then, in relation to a subsequent disposal of the asset (not within that subsection), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

(8) An application or notice of withdrawal under this section shall be in such form and made in such manner as may be prescribed.

Application of *section 1022* for purposes of capital gains tax.

[CGTA75 s51(1) and Sch4 par10(2)]

1029.—*Section 1022* shall apply with any necessary modifications in relation to capital gains tax as it applies in relation to income tax.

Separated spouses: transfers of assets.

[FA97 s72(1) to (3)]

1030.—(1) In this section, ''spouse'' shall be construed in accordance with section 2(2)(*c*) of the Family Law Act, 1995.

(2) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of—

(*a*) an order made under Part II of the Family Law Act, 1995, on or following the granting of a decree of judicial separation within the meaning of that Act,

(*b*) an order made under Part II of the Judicial Separation and Family Law Reform Act, 1989, on or following the granting of a decree of judicial separation where such order is treated, by virtue of section 3 of the Family Law Act, 1995, as if made under the corresponding provision of the Family Law Act, 1995,

(*c*) a deed of separation, or

(*d*) a relief order (within the meaning of the Family Law Act, 1995) made following the dissolution of a marriage,

either of the spouses concerned disposes of an asset to the other spouse, then, subject to *subsection (3)*, both spouses shall be treated for the purposes of the Capital Gains Tax Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

(3) *Subsection (2)* shall not apply if until the disposal the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(4) Where *subsection (2)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (2)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

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Divorced persons: transfers of assets.

[Family Law (Divorce) Act, 1996, s35; FA97 s71(1) to (3)]

1031.—(1) In this section, ''spouse'' shall be construed in accordance with section 2(2)(*c*) of the Family Law (Divorce) Act, 1996.

(2) Notwithstanding any other provision of the Capital Gains Tax Acts, where by virtue or in consequence of an order made under Part III of the Family Law (Divorce) Act, 1996, on or following the granting of a decree of divorce, either of the spouses concerned disposes of an asset to the other spouse, then, subject to *subsection (3)*, both spouses shall be treated for the purpose of the Capital Gains Tax Acts as if the asset was acquired from the spouse making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the spouse making the disposal.

(3) *Subsection (2)* shall not apply if until the disposal the asset formed part of the trading stock of a trade carried on by the spouse making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(4) Where *subsection (2)* applies in relation to a disposal of an asset by a spouse to the other spouse, then, in relation to a subsequent disposal of the asset (not being a disposal to which *subsection (2)* applies), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

PART 45

Charging and Assessing of Non-Residents

CHAPTER 1

Income tax and corporation tax

Restrictions on certain reliefs.

[ITA67 s153; FA74 s6(2) and Sch 1 Pt I par1(vii)(d); FA94 s155; FA96 s132(1) and Sch5 PtI par1(7)]

1032.—(1) Except where otherwise provided by this section, an individual not resident in the State shall not be entitled to any of the allowances, deductions, reliefs or reductions under the provisions specified in the Table to *section 458*.

(2) Where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that he or she—

(*a*) is a citizen of Ireland,

(*b*) is resident outside the State for the sake or on account of his or her health or the health of a member of his or her family resident with him or her or because of some physical infirmity or disease in himself or herself or any such member of his or her family, and that previous to such residence outside the State he or she was resident in the State,

(*c*) is a citizen, subject or national of another Member State of the European Communities or of a country of which the citizens, subjects or nationals are for the time being exempted by an order under section 10 of the Aliens Act, 1935, from any provision of, or of an aliens order under, that Act, or

(*d*) is a person to whom one of the paragraphs (*a*) to (*e*) of the proviso to section 24 of the Finance Act, 1920, applied in respect of the year ending on the 5th day of April, 1935, or any previous year of assessment,

then, *subsection (1)* shall not apply to that individual, but the amount of any allowance, deduction or other benefit mentioned in that subsection shall, in the case of that individual, be reduced to an amount which bears the same proportion to the total amount of that allowance, deduction or other benefit as the portion of his or her income subject to Irish income tax bears to his or her total income from all sources (including income not subject to Irish income tax). Pt.45 S.1032

(3) Notwithstanding *subsection (2)*, where an individual not resident in the State proves to the satisfaction of the Revenue Commissioners that the individual is a resident of another Member State of the European Communities and that the proportion which the portion of the individual's income subject to Irish income tax bears to the individual's total income from all sources (including income not subject to Irish income tax) is 75 per cent or greater, *subsection (1)* or, as the case may be, *subsection (2)* shall not apply to that individual and he or she shall be entitled to the allowance, deduction or other benefit mentioned in *subsection (1)*.

Entitlement to tax credit in respect of distributions.

1033.—An individual who, having made a claim in that behalf, is by virtue of *subsection (2)* or *(3)* of *section 1032* entitled to relief in respect of any year of assessment under any of the provisions specified in the Table to *section 458* shall be entitled to a tax credit in respect of any distribution received by him or her in that year to the same extent as if he or she were resident in the State, and *section 153(1)* shall not apply in relation to such an individual.

[CTA76 s160; FA97 s146(1) and Sch9 PtI par10(8)]

Assessment.

1034.—A person not resident in the State, whether a citizen of Ireland or not, shall be assessable and chargeable to income tax in the name of any trustee, guardian, or committee of such person, or of any factor, agent, receiver, branch or manager, whether such factor, agent, receiver, branch or manager has the receipt of the profits or gains or not, in the like manner and to the like amount as such non-resident person would be assessed and charged if such person were resident in the State and in the actual receipt of such profits or gains; but, in the case of a partnership, the precedent partner (within the meaning of *section 1007*) or, if there is no precedent partner, the factor, agent, receiver, branch or manager shall be deemed to be the agent of a non-resident partner.

[ITA67 s200]

Profits from agencies, etc.

1035.—A non-resident person shall be assessable and chargeable to income tax in respect of any profits or gains arising, whether directly or indirectly, through or from any factorship, agency, receivership, branch or management, and shall be so assessable and chargeable in the name of the factor, agent, receiver, branch or manager.

[ITA67 s201]

Control over residents.

1036.—Where a non-resident person, not being a citizen of Ireland or an Irish firm or company, or a branch of a non-resident person, carries on business with a resident person, and it appears to the inspector that, owing to the close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged that the business done by the resident person in pursuance of that person's connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, then, the non-resident person shall be assessable and chargeable to

[ITA67 s202]

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income tax in the name of the resident person as if the resident person were an agent of the non-resident person.

Charge on percentage of turnover.

[ITA67 s203; F(MP)A68 s3(2) and Sch PtI]

1037.—(1) Where it appears to the inspector or on appeal to the Appeal Commissioners that the true amount of the profits or gains of any non-resident person chargeable with income tax in the name of a resident person cannot in any case be readily ascertained, the non-resident person may, if it is thought fit by the inspector or the Appeal Commissioners, be assessed and charged on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name the non-resident person is so chargeable, and in such a case the provisions of the Income Tax Acts relating to the delivery of statements by persons acting on behalf of others shall extend so as to require returns to be given by the resident person of the business so done by the non-resident person through or with the resident person in the same manner as statements of profits or gains to be charged are to be delivered by persons acting for incapacitated or non-resident persons.

(2) The amount of the percentage under *subsection (1)* shall in each case be determined, having regard to the nature of the business, by the inspector by whom the assessment on the percentage basis is made, subject to appeal to the Appeal Commissioners.

(3) Where either the resident person or the non-resident person is dissatisfied with the percentage determined either in the first instance or by the Appeal Commissioners on appeal, that person may within 4 months of that determination require the inspector or the Appeal Commissioners, as the case may be, to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Minister for Finance, and the decision of the referee or board of referees shall be final and conclusive.

Merchanting profit.

[ITA67 s204; F(MP)A 68 s3(2) and Sch PtI]

1038.—Where a non-resident person is chargeable to income tax in the name of any branch, manager, agent, factor or receiver in respect of any profits or gains arising from the sale of goods or produce manufactured or produced outside the State by the non-resident person, the person in whose name the non-resident person is so chargeable may, if that person thinks fit, apply to—

(*a*) the inspector, or

(*b*) in case of an appeal, to the Appeal Commissioners,

to have the assessment to income tax in respect of those profits or gains made or amended on the basis of the profits which might reasonably be expected to have been earned by—

(i) a merchant, or

(ii) where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold,

who had bought from the manufacturer or producer direct and, on proof to the satisfaction of the inspector or, as the case may be, the Appeal Commissioners of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

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Restrictions on chargeability.

[ITA67 s205]

1039.—(1) Nothing in this Chapter shall render a non-resident person chargeable in the name of—

(*a*) a broker or general commission agent, or

(*b*) an agent, not being—

(i) an authorised person carrying on the regular agency of the non-resident person, or

(ii) a person chargeable as if that person were an agent in pursuance of this Chapter,

in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(2) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make that person chargeable in pursuance of this Chapter in the name of a resident person shall not of itself make that person chargeable in respect of profits arising from those sales or transactions.

Application of *sections 1034* to *1039* for purposes of corporation tax.

[CTA76 s8(4)]

1040.—Without prejudice to the general application of income tax procedure to corporation tax, the provisions of this Chapter relating to the assessment and charge of income tax on persons not resident in the State, in so far as they are applicable to tax chargeable on a company, shall apply with any necessary modifications in relation to corporation tax chargeable on companies not resident in the State.

Rents payable to non-residents.

[FA69 s25]

1041.—(1) *Section 1034* shall not apply to—

(*a*) tax on profits or gains chargeable to tax under Case V of Schedule D, or

(*b*) tax on any of the profits or gains chargeable under Case IV of Schedule D which arise under the terms of a lease, but to a person other than the lessor, or which otherwise arise out of any disposition or contract such that if they arose to the person making it they would be chargeable under Case V of Schedule D,

where payment is made (whether in the State or elsewhere) directly to a person whose usual place of abode is outside the State; but *section 238* shall apply in relation to the payment as it applies to other payments, being annual payments charged with tax under Schedule D and not payable out of profits or gains brought into charge to tax.

(2) Where by virtue of *subsection (1)* the tax chargeable for any year of assessment on a person's profits or gains chargeable to tax under either or both of the Cases referred to in that subsection would but for this subsection be greater than the tax which would be chargeable on such profits or gains but for *subsection (1)*, then, on a claim in that behalf being made, relief shall be given from the excess, whether by repayment or otherwise.

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CHAPTER 2

Capital gains tax

Charging and assessment of persons not resident or ordinarily resident: modification of general rules.

[CGTA75 s5(3); FA82 s33]

1042.—(1) Notwithstanding *section 28(2)*, *31* or *979*, any capital gains tax payable in respect of a chargeable gain which on a disposal accrues to a person not resident or ordinarily resident in the State at the time at which the disposal is made may be assessed and charged before the end of the year of assessment in which the chargeable gain accrues, and the tax so assessed and charged shall be payable at or before the expiration of a period of 3 months beginning with the time at which the disposal is made, or at the expiration of a period of 2 months beginning with the date of making the assessment, whichever is the later.

(2) In computing the amount of capital gains tax payable under *subsection (1)*, *section 31* shall apply with any necessary modifications as regards the deduction of any allowable losses which accrued to the person mentioned in *subsection (1)* before the date of making of the assessment mentioned in that subsection.

Application of *sections 1034* and *1035* for purposes of capital gains tax.

[CGTA75 s51(1) Sch4 and par2(2)]

1043.—Without prejudice to the generality of *section 931(2)*, *sections 1034* and *1035* shall apply, subject to any necessary modifications, to capital gains tax.

PART 46

Persons Chargeable in a Representative Capacity

CHAPTER 1

Income tax and corporation tax

Bodies of persons.

[ITA67 s207]

1044.—(1) Subject to *section 21*, every body of persons shall be chargeable to income tax in the like manner as any person is chargeable under the Income Tax Acts.

(2) The treasurer (or other officer acting as such), auditor or receiver for the time being of any body of persons chargeable to income tax shall be answerable for doing all such acts as are required to be done under the Income Tax Acts for the purpose of the assessment of such body and for payment of the tax, and for the purpose of the assessment of the officers and persons in the employment of such body; but, in the case of a company, the person so answerable shall be the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

(3) Every such officer may from time to time retain out of any money coming into his or her hands on behalf of the body so much of that money as is sufficient to pay the tax charged on the body, and shall be indemnified for all such payments made in pursuance of the Income Tax Acts.

Trustees, guardians and committees.

[ITA67 s208]

1045.—The trustee, guardian or committee of any incapacitated person having the direction, control or management of the property or concern of any such person, whether such person resides in the State or not, shall be assessable and chargeable to income tax in the

like manner and to the like amount as that person would be assessed and charged if he or she were not an incapacitated person. PT.46 S.1045

1046.—(1) The person chargeable in respect of an incapacitated person or in whose name a non-resident person is chargeable shall be answerable for all matters required to be done under the Income Tax Acts for the purpose of assessment and payment of income tax.

Liability of trustees, etc.

[ITA67 s209; CTA76 s8(4)]

(2) Any person charged under the Income Tax Acts in respect of any incapacitated or non-resident person may from time to time retain out of money coming into the first-mentioned person's hands on behalf of that incapacitated or non-resident person so much of that money as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of the Income Tax Acts.

(3) Without prejudice to the general application of income tax procedure to corporation tax, *subsections (1)* and *(2)*, in so far as they are applicable to tax chargeable on a company, shall apply with any necessary modifications in relation to corporation tax chargeable on companies not resident in the State.

1047.—(1) Where a person chargeable to income tax is an infant or dies—

Liability of parents, guardians, executors and administrators.

[ITA67 s210(1) and (2)]

(*a*) the parent or guardian of the infant shall be liable for the tax in default of payment by the infant, and

(*b*) the executor or administrator of the deceased person shall be liable for the tax charged on such deceased person,

and on neglect or refusal of payment any such person so liable may be proceeded against in the like manner as any other defaulter.

(2) A parent or guardian who makes such payment shall be allowed all sums so paid in his or her accounts, and an executor or administrator may deduct all such payments out of the assets and effects of the person deceased.

1048.—(1) Where a person dies, an assessment or an additional first assessment, as the case may be, may be made for any year of assessment for which an assessment or an additional first assessment could have been made on the person immediately before his or her death, or could be made on the person if he or she were living, in respect of the profits or gains which arose or accrued to such person before his or her death, and the amount of the income tax on such profits or gains shall be a debt due from and payable out of the estate of such person, and the executor or administrator of such person shall be assessable and chargeable in respect of such tax.

Assessment of executors and administrators.

[ITA67 s211(1) to (3); F(MP)A68 s4(3)(a) and s6(7); FA78 s11(1)]

(2) No assessment under this section shall be made later than 3 years after the expiration of the year of assessment in which the deceased person died in a case in which the grant of probate or letters of administration was made in that year, and no such assessment shall be made later than 2 years after the expiration of the year of assessment in which such grant was made in any other case; but this subsection shall apply subject to the condition that where the executor or administrator—

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(*a*) after the year of assessment in which the deceased person died, delivers an additional affidavit under section 38 of the Capital Acquisitions Tax Act, 1976, or

(*b*) is liable to deliver an additional affidavit under that section, has been so notified by the Revenue Commissioners and did not deliver the additional affidavit in the year of assessment in which the deceased person died,

such assessment may be made at any time before the expiration of 2 years after the end of the year of assessment in which the additional affidavit was or is delivered.

(3) The executor or administrator of any such deceased person shall, when required to do so by a notice given to the executor or administrator by an inspector, prepare and deliver to the inspector a statement in writing signed by such executor or administrator and containing particulars, to the best of such executor's or administrator's judgment and belief, of the profits or gains which arose or accrued to such deceased person before his or her death and in respect of which such executor or administrator is assessable under this section, and the provisions of the Income Tax Acts relating to statements to be delivered by any person shall apply with any necessary modifications to statements to be delivered under this section.

Receivers appointed by court.

[ITA67 s212; CTA76 s147(1) and (2)]

1049.—(1) A receiver appointed by any court in the State which has the direction and control of any property in respect of which income tax or, as the case may be, corporation tax is charged in accordance with the Tax Acts shall be assessable and chargeable with income tax or, as the case may be, corporation tax in the like manner and to the like amount as would be assessed and charged if the property were not under the direction and control of the court.

(2) Every such receiver shall be answerable for doing all matters and things required to be done under the Tax Acts for the purpose of assessment and payment of income tax or, as the case may be, corporation tax.

Protection for trustees, agents and receivers.

[ITA67 s213]

1050.—(1) A trustee who has authorised the receipt of profits arising from trust property by or by the agent of the person entitled to such profits shall not, if—

(*a*) that person or agent actually received the profits under that authority, and

(*b*) the trustee makes a return as required by *section 890* of the name, address and profits of that person,

be required to do any other act for the purpose of the assessment of that person, unless the Revenue Commissioners require the testimony of the trustee pursuant to the Income Tax Acts.

(2) An agent or receiver of any person resident in the State, other than an incapacitated person, shall not, if that agent or receiver makes a return as required by *section 890* of the name, address and profits of that person, be required to do any other act for the purpose of the assessment of that person, unless the Revenue Commissioners require the testimony of the agent or receiver pursuant to the Income Tax Acts.

Capital gains tax

1051.—*Chapter 1* other than *section 1050* shall, subject to any necessary modifications, apply to capital gains tax.

Application of *Chapter 1* for purposes of capital gains tax.

[CGTA75 s51(1) and Sch4 par2(2)]

PART 47

Penalties, Revenue Offences, Interest on Overdue Tax and Other Sanctions

CHAPTER 1

Income tax and corporation tax penalties

1052.—(1) Where any person—

(*a*) has been required, by notice or precept given under or for the purposes of any of the provisions specified in *column 1* or *2* of *Schedule 29*, to deliver any return, statement, declaration, list or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and that person fails to comply with the notice or precept, or

(*b*) fails to do any act, to furnish any particulars or to deliver any account in accordance with any of the provisions specified in *column 3* of that Schedule,

that person shall, subject to *subsection (2)* and to *section 1054*, be liable to a penalty of £750.

Penalties for failure to make certain returns, etc.

[ITA67 s70(4); s172(5) and s500; FA80 s57(2); FA82 s60; FA92 s248]

(2) Where the notice referred to in *subsection (1)* was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during which the notice was given, the penalty mentioned in *subsection (1)* shall be £1,200.

(3) *Subsections (1)* and *(2)* shall apply subject to *sections 877(5)(b)* and *897(5)*.

(4) In proceedings for the recovery of a penalty incurred under this section or under *section 1053*—

(*a*) a certificate signed by an officer of the Revenue Commissioners, or, in the case of such proceedings in relation to a return referred to in *section 879* or *880*, by an inspector, which certifies that he or she has examined his or her relevant records and that it appears from those records that a stated notice or precept was duly given to the defendant on a stated day shall be evidence until the contrary is proved that the defendant received that notice or precept in the ordinary course;

(*b*) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated notice or precept has not been complied with by the defendant shall

be evidence until the contrary is proved that the defendant did not during that period comply with that notice or precept;

(*c*) in the case of such proceedings in relation to a return referred to in *section 879* or *880*, a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return;

(*d*) a certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period the defendant has failed to do a stated act, furnish stated particulars or deliver a stated account in accordance with any of the provisions specified in *column 3* of *Schedule 29* shall be evidence until the contrary is proved that the defendant did so fail;

(*e*) a certificate certifying as provided for in *paragraph (a)*, *(b)*, *(c)* or *(d)* and purporting to be signed by an officer of the Revenue Commissioners or, as the case may be, by an inspector may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by such officer or, as the case may be, such inspector.

Penalty for fraudulently or negligently making incorrect returns, etc.

[ITA67 s501 and s502; F(MP)A68 s3(2) and Sch PtI; FA74 s86 and Sch2 PtI]

1053.—(1) Where any person fraudulently or negligently—

(*a*) delivers any incorrect return or statement of a kind mentioned in any of the provisions specified in *column 1* of *Schedule 29*,

(*b*) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief, or

(*c*) submits to the Revenue Commissioners, the Appeal Commissioners or an inspector any incorrect accounts in connection with the ascertainment of that person's liability to income tax,

that person shall, subject to *section 1054*, be liable to a penalty of—

(i) £100, and

(ii) the amount or, in the case of fraud, twice the amount of the difference specified in *subsection (5)*.

(2) Where any person fraudulently or negligently furnishes, gives, produces or makes any incorrect return, information, certificate, document, record, statement, particulars, account or declaration of a kind mentioned in any of the provisions specified in *column 2* or *3* of *Schedule 29*, that person shall, subject to *section 1054*, be liable to a penalty of £100 or, in the case of fraud, £250.

(3) Where any return, statement, declaration or accounts mentioned in *subsection (1)* was or were made or submitted by a person,

neither fraudulently nor negligently, and it comes to that person's notice (or, if the person has died, to the notice of his or her personal representatives) that it was or they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of this section as having been negligently made or submitted by that person. Pt.47 S.1053

(4) Subject to *section 1060(2)*, proceedings for the recovery of any penalty under *subsection (1)* or *(2)* shall not be out of time because they are commenced after the time allowed by *section 1063*.

(5) The difference referred to in *subsection (1)(ii)* shall be the difference between—

(*a*) the amount of income tax payable for the relevant years of assessment by the person concerned (including any amount deducted at source and not repayable), and

(*b*) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by that person had been correct.

(6) The relevant years of assessment for the purposes of *subsection (5)* shall be, in relation to anything delivered, made or submitted in any year of assessment, that year, the next year and any preceding year of assessment, and the references in that subsection to the amount of income tax payable shall not, in relation to anything done in connection with a partnership, include any tax not chargeable in the partnership name.

(7) For the purposes of this section, any accounts submitted on behalf of a person shall be deemed to have been submitted by the person unless that person proves that they were submitted without that person's consent or knowledge.

Increased penalties in case of body of persons.

1054.—(1) In this section, ''secretary'' includes persons mentioned in *section 1044(2)*.

[ITA67 s503 and definition of "secretary" in ITA67 s509; FA73 s46]

(2) Where the person mentioned in *section 1052* is a body of persons—

(*a*) the body of persons shall be liable to—

(i) in a case where the notice was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during which the notice was given, a penalty of £1,000, and

(ii) in any other case, a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, a further penalty of £50 for each day on which the failure so continues, and

(*b*) the secretary shall be liable to—

(i) in a case where the notice was given under or for the purposes of any of the provisions specified in *column 1* of *Schedule 29* and the failure continues after the end of the year of assessment following that during

which the notice was given, a separate penalty of £200, and

(ii) in any other case, a separate penalty of £100.

(3) Where the person mentioned in *section 1053* is a body of persons—

(*a*) in the case of such fraud or negligence as is mentioned in *section 1053(1)*—

(i) the body of persons shall be liable to a penalty of—

(I) £500 or, in the case of fraud, £1,000, and

(II) the amount or, in the case of fraud, twice the amount of the difference specified in *section 1053(5)*, and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200, and

(*b*) in the case of any such fraud or negligence as is mentioned in *section 1053(2)*—

(i) the body of persons shall be liable to a penalty of £500 or, in the case of fraud, £1,000, and

(ii) the secretary shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(4) This section shall apply subject to *sections 877(5)(b)* and *897(5)*, but otherwise shall apply notwithstanding anything in the Income Tax Acts.

Penalty for assisting in making incorrect returns, etc.

[ITA67 s505; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

1055.—Any person who assists in or induces the making or delivery for any purposes of income tax or corporation tax of any return, account, statement or declaration which that person knows to be incorrect shall be liable to a penalty of £500.

Penalty for false statement made to obtain allowance.

[ITA67 s516; CTA76 s147(1) and (2); WCTIPA93 s11]

1056.—(1) In this section, ''the specified difference'', in relation to a person, means the difference between—

(*a*) the amount of income tax or, as the case may be, corporation tax payable in relation to the person's or, as may be appropriate, another person's liability to income tax for a year of assessment or to corporation tax for an accounting period, as the case may be, and

(*b*) the amount which would have been the amount so payable if—

(i) any statement or representation referred to in *subsection (2)(a)* had not been false,

(ii) any account, return, list, declaration or statement referred to in *subsection (2)(b)(i)* had not been false or fraudulent, or

(iii) the full amount of income referred to in *subsection (2)(b)(ii)* had been disclosed.

(2) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if— Pt.47 S.1056

(*a*) in relation to the person's liability to income tax for a year of assessment or to corporation tax for an accounting period, as the case may be, the person knowingly makes any false statement or false representation—

(i) in any return, statement or declaration made with reference to tax, or

(ii) for the purpose of obtaining any allowance, reduction, rebate or repayment of tax, or

(*b*) in relation to liability to income tax of any other person for a year of assessment or to liability to corporation tax of any other person for an accounting period, as the case may be, the person knowingly and wilfully aids, abets, assists, incites or induces that other person—

(i) to make or deliver a false or fraudulent account, return, list, declaration or statement with reference to property, profits or gains or to tax, or

(ii) unlawfully to avoid liability to tax by failing to disclose the full amount of that other person's income from all sources.

(3) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction where the amount of the specified difference is—

(i) less than £1,200, to a fine not exceeding 25 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 12 months or to both;

(ii) equal to or greater than £1,200, to a fine not exceeding £1,200 or, at the discretion of the court, to a term of imprisonment not exceeding 12 months or to both;

or

(*b*) on conviction on indictment where the amount of the specified difference is—

(i) less than £5,000, to a fine not exceeding 25 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 2 years or to both;

(ii) equal to or greater than £5,000 but less than £10,000, to a fine not exceeding 50 per cent of the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 3 years or to both;

(iii) equal to or greater than £10,000 but less than £25,000, to a fine not exceeding the amount of the specified

difference or, at the discretion of the court, to a term of imprisonment not exceeding 4 years or to both;

(iv) equal to or greater than £25,000 but less than £100,000, to a fine not exceeding twice the amount of the specified difference or, at the discretion of the court, to a term of imprisonment not exceeding 8 years or to both;

(v) equal to or greater than £100,000, to a fine not exceeding twice the amount of the specified difference and to a term of imprisonment not exceeding 8 years.

(4) *Subsections (4)* and *(6)* to *(8)* of *section 1078* shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of that section.

(5) This section shall not apply to a declaration given under section 2 or 3 of the Waiver of Certain Tax, Interest and Penalties Act, 1993, by reason only of any false statement or false representation made in relation to subsection (3)(*a*)(iii) of section 2 of that Act or subsection (6)(*b*)(III) of section 3 of that Act, as the case may be.

Fine for obstruction of officers in execution of duties.

[ITA67 s515; CTA76 s147(1) and (2)]

1057.—(1) Where any person (in this subsection referred to as ''the first-mentioned person'') or any person in the first-mentioned person's employ, obstructs, molests or hinders—

(*a*) an officer or any person employed in relation to any duty of income tax or corporation tax in the execution of his or her duty, or of any of the powers or authorities by law given to the officer or person, or

(*b*) any person acting in the aid of an officer or any person so employed,

the first-mentioned person shall for every such offence incur a fine of £100.

(2) Without prejudice to any other mode of recovery, the fine imposed under this section may be proceeded for and recovered in the like manner and, in the case of summary proceedings, with the like power of appeal as any fine or penalty under any Act relating to the excise.

Refusal to allow deduction of tax.

[ITA67 s520; CTA76 s147(1) and (2); FA96 s132(1) and Sch5 PtI par10(5)]

1058.—(1) A person who refuses to allow a deduction of income tax or corporation tax authorised by the Tax Acts to be made out of any payment shall forfeit the sum of £50.

(2) Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction shall be void.

Power to add penalties to assessments.

[ITA67 s513; CTA76 s147(3) and (4)]

1059.—Where an increased rate of income tax or corporation tax is imposed as a penalty, or as part of or in addition to a penalty, the penalty and increased rate of tax may be added to the assessment and collected and levied in the like manner as any tax included in such assessment may be collected and levied.

PT.47
Proceedings against executor or administrator.

1060.—(1) Where the person who has incurred any penalty has died, any proceedings under the Tax Acts which have been or could have been commenced against that person may be continued or commenced against his or her executor or administrator, as the case may be, and any penalty awarded in proceedings so continued or commenced shall be a debt due from and payable out of his or her estate.

[ITA67 s504; CTA76 s147(3) and (4); FA78 s11(2)]

(2) Proceedings may not be commenced by virtue of *subsection (1)* against the executor or administrator of a person at a time when by virtue of *subsection (2)* of *section 1048* that executor or administrator is not assessable and chargeable under that section in respect of income tax on profits or gains which arose or accrued to the person before his or her death.

Recovery of penalties.

1061.—(1) Without prejudice to any other mode of recovery of a penalty under the preceding provisions of this Part or under *section 305*, *783*, *789* or *886*, an officer of the Revenue Commissioners authorised by them for the purposes of this subsection may sue in his or her own name by civil proceedings for the recovery of the penalty in the High Court as a liquidated sum, and section 94 of the Courts of Justice Act, 1924, shall apply accordingly.

[ITA67 s508; FA68 s6(6); CTA76 s147(3) and (4)]

(2) Where an officer who has commenced proceedings pursuant to this section, or who has continued the proceedings by virtue of this subsection, dies or otherwise ceases for any reason to be an officer authorised for the purposes of *subsection (1)*—

(*a*) the right of such officer to continue the proceedings shall cease and the right to continue them shall vest in such other officer so authorised as may be nominated by the Revenue Commissioners,

(*b*) where such other officer is nominated under *paragraph (a)*, he or she shall be entitled accordingly to be substituted as a party to the proceedings in the place of the first-mentioned officer, and

(*c*) where an officer is so substituted, he or she shall give notice in writing of the substitution to the defendant.

(3) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying that—

(*a*) a person is an officer of the Revenue Commissioners, and

(*b*) he or she has been authorised by them for the purposes of *subsection (1)*,

shall be evidence of those facts until the contrary is proved.

(4) In proceedings pursuant to this section, a certificate signed by a Revenue Commissioner certifying that—

(*a*) the plaintiff has ceased to be an officer of the Revenue Commissioners authorised by them for the purposes of *subsection (1)*,

(*b*) another person is an officer of the Revenue Commissioners,

(*c*) such other person has been authorised by them for the purposes of *subsection (1)*, and

(*d*) he or she has been nominated by them in relation to the proceedings for the purposes of *subsection (2)*,

shall be evidence of those facts until the contrary is proved.

(5) In proceedings pursuant to this section, a certificate certifying the facts referred to in *subsection (3)* or *(4)* and purporting to be signed by a Revenue Commissioner may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been so signed.

(6) Subject to this section, the rules of the High Court for the time being applicable to civil proceedings shall apply to proceedings pursuant to this section.

Proceedings where penalty recoverable cannot be definitely ascertained.

[ITA67 s510; CTA76 s147(3) and (4)]

1062.—Notwithstanding that the amount of a penalty recoverable under the Tax Acts cannot be definitely ascertained by reason of the fact that the amount of income tax or, as the case may be, corporation tax by reference to which such penalty is to be calculated has not been finally ascertained, proceedings may be instituted for the recovery of such penalty and, if at the hearing of such proceedings the amount of such tax has not then been finally ascertained, the Court may, if it is of the opinion that such penalty is recoverable, adjourn such proceedings and shall not give any judgment or make any order for the payment of such penalty until the amount of such tax has been finally ascertained.

Time limit for recovery of fines and penalties.

[ITA67 s511; FA74 s86 and Sch2 PtI; CTA76 s147(3) and (4)]

1063.—Proceedings for the recovery of any fine or penalty incurred under the Tax Acts in relation to or in connection with income tax or corporation tax may, subject to *section 1060*, be begun at any time within 6 years after the date on which such fine or penalty was incurred.

Time for certain summary proceedings.

[ITA67 s517; FA79 s29; CTA76 s148]

1064.—Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings under *section 889*, *987* or *1056* may be instituted within 10 years from the date of the committing of the offence or incurring of the penalty, as the case may be.

Mitigation and application of fines and penalties.

[ITA67 s512; CTA76 s147(3) and (4); WCTIPA93 s10]

1065.—(1) (*a*) The Revenue Commissioners may in their discretion mitigate any fine or penalty, or stay or compound any proceedings for the recovery of any fine or penalty, and may also, after judgment, further mitigate the fine or penalty, and may order any person imprisoned for any offence to be discharged before the term of his or her imprisonment has expired.

(*b*) The Minister for Finance may mitigate any such fine or penalty either before or after judgment.

(2) Notwithstanding *subsection (1)*—

(*a*) where a fine or penalty is mitigated or further mitigated, as the case may be, after judgment, the amount or amounts so mitigated shall, subject to *paragraph (b)*, not be

greater than 50 per cent of the amount of the fine or penalty, and

(*b*) in relation to an individual, being an individual referred to in section 2(2) of the Waiver of Certain Tax, Interest and Penalties Act, 1993, or a person referred to in section 3(2) of that Act, who—

(i) fails to give a declaration required by section 2(3)(*a*) of that Act, or

(ii) gives a declaration referred to in *subparagraph (i)* or a declaration under section 3(6)(*b*) of that Act which is false or fails to comply with the requirements of subparagraph (iii) or (iv) of section 2(3)(*a*) of that Act or subparagraph (III) of section 3(6)(*b*) of that Act to the extent that any of those subparagraphs apply to that person,

no mitigation shall be allowed.

(3) Moneys arising from fines, penalties and forfeitures, and all costs, charges and expenses payable in respect of or in relation to such fines, penalties and forfeitures, shall be accounted for and paid to the Revenue Commissioners or as they direct.

False evidence: punishment as for perjury.

1066.—If any person on any examination on oath, or in any affidavit or deposition authorised by the Tax Acts, wilfully and corruptly gives false evidence, or wilfully and corruptly swears any matter or thing which is false or untrue, that person shall on conviction be subject and liable to such punishment as persons convicted of perjury are subject and liable to.

[ITA67 s518; CTA76 s147(1) and (2)]

Admissibility of statements and documents in criminal and tax proceedings.

1067.—(1) Statements made or documents produced by or on behalf of a person shall not be inadmissible in any proceedings mentioned in *subsection (2)* by reason only that it has been drawn to the person's attention that—

[ITA67 s521; FA74 s86 and Sch2 PtI; CTA76 s147(1) and (2)]

(*a*) in relation to income tax or, as the case may be, corporation tax, the Revenue Commissioners may accept pecuniary settlements instead of instituting proceedings, and

(*b*) although no undertaking can be given as to whether or not the Revenue Commissioners will accept such a settlement in the case of any particular person, it is the practice of the Revenue Commissioners to be influenced by the fact that a person has made a full confession of any fraud or default to which the person has been a party and has given full facilities for investigation,

and that the person was or may have been induced thereby to make the statements or produce the documents.

(2) The proceedings referred to in *subsection (1)* are—

(*a*) any criminal proceedings against the person in question for any form of fraud or wilful default in connection with or in relation to income tax or corporation tax, and

(*b*) any proceedings against the person in question for the recovery of any sum due from that person, whether by

means of tax, fine, forfeiture or penalty, in connection with or in relation to income tax or corporation tax.

Failure to act within required time.

[ITA67 s507; CTA76 s147(1) and (2)]

1068.—For the purposes of this Chapter, a person shall be deemed not to have failed to do anything required to be done within a limited time if the person did it within such further time, if any, as the Commissioners or officer concerned may have allowed and, where a person had a reasonable excuse for not doing anything required to be done, the person shall be deemed not to have failed to do it if the person did it without unreasonable delay after the excuse had ceased.

Evidence of income.

[ITA67 s506 and definition of "assessment" in ITA67 s509; F(MP)A68 s3(2) and Sch PtI; CTA76 s147(1) and (2); FA88 s21(2)]

1069.—(1) In this section, "assessment" includes—

(*a*) an additional assessment, and

(*b*) an assessment as amended under *section 955*.

(2) For the purposes of this Chapter, any assessment which can no longer be varied by the Appeal Commissioners on appeal or by the order of any court shall be sufficient evidence that the income in respect of which income tax or, as the case may be, corporation tax is charged in the assessment arose or was received as stated in the assessment.

Saving for criminal proceedings.

[ITA67 s514; CTA76 s147(1) and (2)]

1070.—The Tax Acts shall not affect any criminal proceedings for a felony or misdemeanour.

CHAPTER 2

Other corporation tax penalties

Penalties for failure to make certain returns.

[CTA76 s143(7)(c) and (8)]

1071.—(1) Where any company has been required by notice served under *section 884* to deliver a return and the company fails to comply with the notice—

(*a*) the company shall be liable to a penalty of £500 except in the case mentioned in *subsection (2)* and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and

(*b*) the secretary of the company shall be liable to a separate penalty of £100 except in the case mentioned in *subsection (2)*.

(2) Where any failure mentioned in *subsection (1)* continues after the expiration of one year beginning with the date on which the notice was served, the first of the penalties mentioned in that subsection for which the company is liable shall be £1,000, and the secretary of the company shall be liable to a separate penalty of £200.

(3) The reference in *subsection (1)* to the delivery of a return shall be deemed to include a reference to the doing of any of the things specified in *subparagraphs (i)* and *(ii)* of *paragraph (b)* of *section 884(9)*.

PT.47

Penalties for fraudulently or negligently making incorrect returns, etc.

[CTA76 s143(9), (10) and (11)]

1072.—(1) Where a company fraudulently or negligently—

(*a*) delivers an incorrect return under *section 884*,

(*b*) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief in respect of corporation tax, or

(*c*) submits to an inspector, the Revenue Commissioners or the Appeal Commissioners any incorrect accounts in connection with the ascertainment of the company's liability to corporation tax,

the company shall be liable to a penalty of—

(i) £500 or, in the case of fraud, £1,000, and

(ii) the amount or, in the case of fraud, twice the amount of the difference specified in *subsection (2)*, and

the secretary of the company shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(2) The difference referred to in *subsection (1)* shall be the difference between—

(*a*) the amount of corporation tax payable by the company for the accounting period or accounting periods comprising the period to which the return, statement, declaration or accounts relate, and

(*b*) the amount which would have been the amount so payable if the return, statement, declaration or accounts had been correct.

(3) *Subsection (3)* of *section 1053* shall apply for the purposes of this section as it applies for the purposes of *section 1053*.

Penalties for failure to furnish particulars required to be supplied by new companies.

[CTA76 s141(2)]

1073.—Where a company fails to deliver a statement which it is required to deliver under *section 882*—

(*a*) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and

(*b*) the secretary of the company shall be liable to a separate penalty of £100.

Penalties for failure to give notice of liability to corporation tax.

[CTA76 s142(2)]

1074.—Where a company fails to give a notice which it is required to give under *section 883*—

(*a*) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and

(*b*) the secretary of the company shall be liable to a separate penalty of £100.

Pt.47
Penalties for failure to furnish certain information and for incorrect information.

[CTA76 s149]

1075.—(1) Where any person has been required by notice given under or for the purposes of *section 401* or *427* or *Part 13* to furnish any information or particulars and that person fails to comply with the notice, that person shall be liable, subject to *subsection (3)*, to a penalty of £100 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £10 for each day on which the failure so continues.

(2) Where the person fraudulently or negligently furnishes any incorrect information or particulars of a kind mentioned in *section 239*, *401* or *427* or *Part 13*, the person shall be liable, subject to *subsection (4)*, to a penalty of £100 or, in the case of fraud, £250.

(3) Where the person mentioned in *subsection (1)* is a company—

(*a*) the company shall be liable to a penalty of £500 and, if the failure continues after judgment has been given by the court before which proceedings for the penalty have been commenced, to a further penalty of £50 for each day on which the failure so continues, and

(*b*) the secretary of the company shall be liable to a separate penalty of £100.

(4) Where the person mentioned in *subsection (2)* is a company—

(*a*) the company shall be liable to a penalty of £500 or, in the case of fraud, £1,000, and

(*b*) the secretary of the company shall be liable to a separate penalty of £100 or, in the case of fraud, £200.

(5) *Subsection (3)* of *section 1053* shall apply for the purposes of this section as it applies for the purposes of *section 1053*.

Supplementary provisions (*Chapter 2).*

[CTA76 s154 and s147(3) and(4) (as it relates to application of ITA67 s172(5))]

1076.—(1) In this Chapter, ''secretary'' includes persons mentioned in *section 1044(2)* and, in the case of a company not resident in the State, the agent, manager, factor or other representative of the company.

(2) In proceedings for the recovery of a penalty incurred under the provisions of the Corporation Tax Acts—

(*a*) a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that a stated notice was duly given to the defendant on a stated day shall be evidence until the contrary is proved that the defendant received that notice in the ordinary course;

(*b*) a certificate signed by an inspector which certifies that he or she has examined his or her relevant records and that it appears from those records that during a stated period a stated return was not received from the defendant shall be evidence until the contrary is proved that the defendant did not during that period deliver that return;

(*c*) a certificate certifying as provided for in *paragraph (a)* or *(b)* and purporting to be signed by an inspector may be tendered in evidence without proof and shall be deemed