



**Law
Commission**
Reforming the law

Statute Law Repeals: Consultation Paper Taxation

SLR 02/11: Closing date for responses – 12 October 2011

ABOUT THIS CONSULTATION

The Law Commission: The Law Commission for England and Wales was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting reform of the law.

The Law Commissioners are: The Rt Hon Lord Justice Munby (*Chairman*), Professor Elizabeth Cooke, Mr David Hertzell, Professor David Ormerod and Frances Patterson QC.

The Chief Executive is Mr Mark Ormerod CB.

Topic of this consultation: The Consultation Paper has been produced by the Law Commission's Statute Law Repeals Team. It reviews the statute law relating to aspects of Taxation Law (linked to the former Tax Law Rewrite project), and proposes the repeal of a number of obsolete and spent Acts.

Duration of the consultation: 7 July 2011 to 12 October 2011.

How to respond

Please send your responses either-

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If you send your comments by post, it would be helpful if, where possible, you could also send them electronically (for example, by email to the above address, in any commonly used format).

After the consultation: In the light of the responses received the Commission will publish its repeal recommendations in its next Statute Law Repeals report. This report is likely to be published in early 2012 and will be presented to Parliament. It will be for Parliament to decide whether or not to implement these recommendations.

Availability of this Consultation Paper: You can view or download the paper free of charge on our website at: www.lawcom.gov.uk via the link to Consultations > A-Z of consultations > Taxation repeal proposals.

Freedom of Information Statement

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

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BACKGROUND NOTES ON STATUTE LAW REPEALS (SLR)

What is it?

1. Our SLR work involves repealing statutes that are no longer of practical utility. The purpose is to modernise and simplify the statute book, thereby reducing its size and thus saving the time of lawyers and others who use it. This in turn helps to avoid unnecessary costs. It also stops people being misled by obsolete laws that masquerade as live law. If an Act features still in the statute book and is referred to in text-books, people reasonably enough assume that it must mean something.

Who does it?

2. Our SLR work is carried out by the Law Commission and the Scottish Law Commission pursuant to section 3(1) of the Law Commissions Act 1965. Section 3(1) imposes a duty on both Commissions to keep the law under review “with a view to its systematic development and reform, including in particular ... the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law”.

Statute Law (Repeals) Bill

3. Implementation of the Commissions’ SLR proposals is by means of special Statute Law (Repeals) Bills. 18 such Bills have been enacted since 1965 repealing more than 2000 whole Acts and achieving partial repeals in thousands of others. Broadly speaking the remit of a Statute Law (Repeals) Bill extends to any enactment passed at Westminster. Accordingly it is capable of repealing obsolete statutory text throughout the United Kingdom (i.e. England, Wales, Scotland and Northern Ireland) as well as extending where appropriate to the Isle of Man.

Consultation

4. The Law Commission consults widely before finalising its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals. So the consultation may be with central or local government, organisations, trade bodies, individuals or anyone else who appears to have an interest in a proposal.
5. So far as consulting central government is concerned, any Department or agency with an interest in the subject matter of the repeal proposal will be invited to comment. Because obsolete legislation often extends throughout the United Kingdom it may be necessary to invite comments from several different Departments. So the following will routinely be consulted-
 - ◆ The English Department or Departments with policy responsibility for the subject matter of the proposed repeal (this responsibility will extend to Scotland in appropriate cases)
 - ◆ The Welsh Assembly Government and the Wales Office (unless the proposed repeal relates only to England)
 - ◆ SLR colleagues at the Scottish Law Commission (if the proposed repeal extends to Scotland)
 - ◆ Northern Ireland officials (if the proposed repeal extends to Northern Ireland).

Selection of repeal candidates

6. Candidates for repeal are selected on the basis that they are no longer of practical utility. Usually this is because they no longer have any legal effect on technical grounds - because they are spent, unnecessary or obsolete. But sometimes they are selected because, although they strictly speaking do continue to have legal effect, the purposes for which they were enacted either no longer exist or are nowadays being met by some other means.
7. Provisions commonly repealed by Statute Law (Repeals) Acts include the following-
 - (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
 - (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
 - (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
 - (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
 - (e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
 - (f) commencement provisions once the whole of an Act is in force;
 - (g) transitional or savings provisions that are spent;
 - (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
 - (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

General savings

8. Much SLR work is possible because of the general savings provisions of section 16(1) of the Interpretation Act 1978. This provides that where an Act repeals an enactment, the repeal does not (unless the contrary intention appears) -
 - “(a) revive anything not in force or existing at the time at which the repeal takes effect;
 - (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;

- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed”.

Gradual obsolescence

- 9. The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete. The Statute Law (Repeals) Act 2008 contained several examples of legislation being overtaken by social and economic changes. A scheme to provide farming work for ex-servicemen after the First World War had long fallen into disuse. Changes in agriculture during the second half of the 20th century had greatly reduced the numbers of persons seeking employment in farming. An Act of 1792 that criminalised the giving of false character references to servants seeking domestic employment had become superseded by changes in the civil law. And a Victorian Act requiring noisy street musicians to leave the area on pain of a forty shilling fine had long become obsolete.
- 10. Even within individual statutes, the obsolescence tends to be gradual. Some provisions fade away more quickly than others. These include commencement and transitory provisions and ‘pump-priming’ provisions (e.g. initial funding and initial appointments to a Committee) to implement the new legislation. Next to go may be order-making powers that are no longer needed. Then the Committee established by the Act no longer meets and can be abolished. However, other provisions may be unrepealable for generations, particularly if they confer pensions rights or confer security of tenure or employment rights. Other provisions may be virtually unrepealable ever. Much of English property law relies on medieval statutes such as Quia Emptores (1290) which is regarded as one of the pillars of the law of real property. This last example usefully shows that just because a statute is ancient it is not necessarily obsolete.

Help from consultees

- 11. Sometimes it is impossible to tell whether a provision is repealable without factual information that is not readily ascertainable without ‘inside’ knowledge of a Department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the repeal notes drafted by the Law Commissions often invite the organisation being consulted to supply the necessary information. Any help that can be given to fill in the gaps is much appreciated.

TAXATION REPEAL PROPOSALS

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TAXATION REPEAL PROPOSALS

GROUP [] - TAXATION

Repeals: statutory enactments

<i>Reference</i>	<i>Extent of repeal</i>
Income Tax Act 1952 (15 & 16 Geo. 6 and 1 Eliz. 2 c.10)	Section 228. Section 400(4). Section 406(6).
Provisional Collection of Taxes Act 1968 (c.2)	Section 1(1A).
Finance Act 1969 (c.32)	Section 11(5). Section 60. In Schedule 20, paragraph 11.
Taxes Management Act 1970 (c.9)	Section 43A(2A)(b).
Finance Act 1973 (c.51)	Schedule 16A.
National Insurance Surcharge Act 1976 (c.85)	The whole Act.
Finance Act 1984 (c.43)	Section 117.
Finance Act 1985 (c.54)	Section 97. In Schedule 22, paragraph 6.
Income and Corporation Taxes Act 1988 (c.1)	Section 231B(4)(d). ¹ [see note] Section 774. Sections 812 to 814. In section 843(4) the words “and 812”. In Schedule 15, paragraph 24(4). In Schedule 30, paragraphs 9, 14, 15, 19 and 20.
Finance Act 1988 (c.39)	Section 31. Section 58(1). Section 58(4). Section 58(5). Section 61(1).

¹ This repeal is contingent upon the repeal of F (No. 2) A 1997 (c.58), s 35 below, which may already have been caught by the F (No. 3) Bill 2011 once it receives royal assent. This will need revisiting.

	<p>In section 61(5) the words “Subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and”.</p> <p>Section 75. Section 119. Section 120. Section 122. In Schedule 3, paragraph 13. Schedule 5.</p>
<p>Finance Act 1989 (c.26)</p>	<p>Section 91. Section 92(1), (2). Section 96(1), (4). Section 114. Section 160(3). Section 162.</p>
<p>Finance Act 1991 (c.31)</p>	<p>Section 27(6). Section 46. Section 66. Section 75. In Schedule 6, paragraph 4.</p>
<p>Finance (No. 2) Act 1992 (c.48)</p>	<p>Sections 47 to 49. Section 63. Schedule 11.</p>
<p>Finance Act 1993 (c.34)</p>	<p>Section 67. Section 79(2). Section 107(2). Section 182(1)(ca). Section 205(3). In Schedule 6, paragraph 10. In Schedule 18, paragraph 6. In Schedule 23, in Part 6 (under the Provisional Collection of Taxes Act 1968) the words “and subsection (1A)”.</p>
<p>Finance Act 1994 (c.9)</p>	<p>Section 176(2). In Schedule 14, paragraphs 2 and 4. In Schedule 16, paragraph 5(1). In Schedule 17, paragraph 1. In Schedule 19, paragraphs 38, 39 and 40.</p>
<p>Finance Act 1995 (c.4)</p>	<p>Section 42(3) to (5). Section 57. In Schedule 6, paragraph 27.</p>

Finance Act 1996
(c.8)

In Schedule 17, paragraphs 24
and 26.

Section 153.
Section 156.
In Schedule 6, paragraph 11.
In Schedule 7, paragraphs 20
and 26.
In Schedule 14, paragraph 26.
In Schedule 20, paragraph 38.
In Schedule 21, paragraphs 19,
45, 46 and 48.
In Schedule 36, paragraphs 1
and 3(11).
In Schedule 37, paragraph
11(2)(b).

Finance Act 1997
(c.16)

Section 61.

Finance (No. 2) Act 1997
(c.58)

Section 17.
In section 25, subsections (1),
(5), (6) and (7).
Section 35.² **[see note below]**
In Schedule 3, paragraph 9.
In Schedule 4, paragraph 29.
Schedule 5. **[see note below]**

Finance Act 1998
(c.36)

In section 30, subsections (2)
to (6).
Section 62.
Sections 103 to 105.
In section 106, subsections (4)
to (9).
Section 153.
In Schedule 3, paragraphs 1, 2,
3, 4, 5, 8, 9, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23,
25, 26, 27, 28, 29, 30, 31, 32,
33, 34, 35, 36, 37, 38, 39, 41,
42, 43, 44, 45, 46, 47 and 48.
In Schedule 7 paragraph 1 the
words "375A(1)(b)," "568(1),
570(1)," "770(2)(a)(iii) and (b)(iii)
," and " , Schedule 21,
paragraph 6(1)(b) and (3) (twice)".
In Schedule 7, paragraph 2, in
paragraph 3 the words " , 76(1)
and (4)(a) and 112(1)",
paragraph 8 and paragraph 12.
Schedule 11.

² Section 35 and Schedule 5 may have been repealed via the Finance (No. 3) Bill when it becomes the F (No. 3) A 2011, Sch 26 para 1.

<p>Finance Act 1999 (c.16)</p>	<p>Section 46. In Schedule 4, paragraphs 2, 3(2), 5(2)(b), (3), (4), 6, 7(2), 8, 9(2), 10, 11, 12, 13(a), 14(a), (b), 15(2)(b), (3), (4), (6), 16, 17(2) and 18(1).</p>
<p>Finance Act 2000 (c.17)</p>	<p>Section 38. In Schedule 30, paragraph 4(13) and (14), paragraphs 10, 14, 18 and 26.</p>
<p>Capital Allowances Act 2001 (c.2)</p>	<p>In section 542 the words “or relevant activity” in four places, and in the sub-heading to the section. In Schedule 2, paragraph 65.</p>
<p>Finance Act 2001 (c.9)</p>	<p>Section 81. In Schedule 27, paragraph 7.</p>
<p>Finance Act 2002 (c.23)</p>	<p>In section 88(2)(a) the words “812(2),”.</p>
<p>Income Tax (Earnings and Pensions) Act 2003 (c.1)</p>	<p>In Schedule 6, paragraph 243.</p>
<p>Finance Act 2003 (c.14)</p>	<p>Section 146. In section 153(2)(a) the words “, 814(1)”. In section 207(2) the words “(b) Schedule 13B to that Act (elections as to transfer of children’s tax credit),”.</p>
<p>Finance Act 2004 (c.12)</p>	<p>Section 260(6) [see text below]</p>
<p>Income Tax (Trading and Other Income) Act 2005 (c.5)</p>	<p>In Schedule 1, paragraphs 310, 326, 457(3) and 458(4).</p>
<p>Income Tax Act 2007 (c.3)</p>	<p>In section 45(1) the words “or (b) (as applicable)”. In section 45(3) the words “, and (b) £6,065, in any other case”. In section 46(1) the words “or (b) (as applicable)”. In section 46(3) the words “, and (b) £6,065, in any other case”. In section 47(4)(a) the words “or (b) (as applicable)” and in section</p>

47(4)(b) the words “or (b) (as applicable)”.

In section 48(4)(a) the words “or (b) (as applicable)” and in section 48(4)(b) the words “or (b) (as applicable)”.

In section 57(1)(f) the words “and (b)” and in section 57(1)(g) the words “and (b)”.

In section 57(3)(b) the words “and (b)” twice.

Section 577(8)(a).

In Schedule 1, paragraphs 254(c) (and the preceding “and”), 359 and 390.

Corporation Tax Act 2009 (c.4)	In Schedule 1, paragraph 225.
Corporation Tax Act 2010 (c.4)	In Schedule 1, paragraphs 103, 116.
Taxation (International and Other Provisions) Act 2010 (c.8)	In Schedule 8, paragraphs 30 and 31.

Revocations: statutory instruments

<i>Reference</i>	<i>Extent of revocation</i>
The Charitable Deductions (Approved Schemes) Regulations 1986 (SI 1986 No. 2211)	Regulation 16.
The Charitable Deductions (Approved Schemes) (Amendment No. 2) Regulations 2000 (SI 2000 No. 2083)	Regulation 8.
The Income and Corporation Taxes (Electronic Communications) Regulations 2003 (SI 2003 No. 282)	In regulation 2(1)(a)(iii) the words “30 or”.
The Charitable Deductions (Approved Schemes) (Amendment) Regulations 2003 (SI 2003 No. 1745)	Regulation 7.

Note The repeals or revocations, shown in Group [] - Taxation, do not have retrospective effect.

Consequential and Connected Provisions

Income and Corporation Taxes Act 1988 (c.1)

In Schedule 15 paragraph 24 to the Income and Corporation Taxes Act 1988 (policies issued by non-resident companies), after paragraph 24(3) insert –

“(4) The condition secondly referred to in sub-paragraph (2) above is that the policy holder is resident in the United Kingdom.”

Finance Act 1998 (c.36)

The repeal by this Act of section 30(2) to (6) of the Finance Act 1998 shall not affect the continued operation of any Regulations made by the Treasury under that section which are in force immediately before the coming into force of the repeal.

Post-consolidation repeals for Tax Law Rewrite

Background

The repeals recommended in this note have been referred to the Law Commission by H. M. Revenue and Customs (HMRC). They flow in the main from the Tax Law Rewrite project which was prefaced by a requirement in the Finance Act 1995 (c.4), s 160 placed on the Inland Revenue to report to Treasury Ministers on “tax simplification”. The project, which started with a blueprint paper published in 1996,³ led to the enactment of seven taxation statutes, spanning the years 2001 to 2010 -

- Capital Allowances Act 2001 (c.2) (“CAA 2001”)
- Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”)
- Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”)
- Income Tax Act 2007 (c.3) (“ITA 2007”)
- Corporation Tax Act 2009 (c.4) (“CTA 2009”)
- Corporation Tax Act 2010 (c.4) (“CTA 2010”)
- Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”).

A large proportion of the repeals set out in this note are consequential upon the consolidation process undertaken within the project. Rewrites of subordinate tax legislation also went hand-in-hand with the primary legislative task.

This note addresses the tax law repeals by setting out the tax statutes in a chronological sequence, running from 1952 through to 2010.

Income Tax Act 1952

1. The Income Tax Act 1952 (c.10) (“ITA 1952”) was repealed in whole by the Income and Corporation Taxes Act 1970 (c.10) (“ICTA 1970”), s 538(1) and Sch 16, subject to certain savings.

2. *Section 228* of ITA 1952 had dealt with relief from tax in respect of income accumulated under a trust created by “any will or settlement” for a potential beneficiary who would receive the moneys on “attaining some specified age or marrying”. In certain circumstances tax paid on the accumulated income could be reclaimed. *Section 400(4)* of ITA 1952 qualified the personal relief by providing that no repayment under section 228 was to be made on account of tax paid in respect of income which had been treated as income of a settlor. And, by *section 406(6)*, a restriction in similar

³ Inland Revenue *Tax Law Rewrite: The Way Forward* (July 1996).

terms was laid down. The continuing existence of both these later sections was dependent upon the continuing existence of *section 228*.

3. By section 537(1) of ICTA 1970 and Schedule 14, the repeals set out in section 538(1) and Schedule 16 (including the repeal of the whole of ITA 1952) were made subject to specific savings. Schedule 14 paragraph 1 provided that the ICTA 1970 repeals “shall not be taken as affecting section 228” of ITA 1952 or the limitations imposed by sections 400(4) and 406(6) on settlements. In other words, all these statutory provisions remained alive, notwithstanding the 1970 Act.

4. The saving provision in ICTA 1970, Schedule 14 paragraph 1 (which had saved *section 228* of ITA 1952, and *sections 400(4) and 406(6)*) was repealed by the Income and Corporation Taxes Act 1988 (c.1) (“ICTA 1988”), s 844(4) and Sch 31, effective for the tax year 1988-89 and subsequent years of assessment.⁴ Four years later the whole of ICTA 1970 (including section 537) was repealed by the Taxation of Chargeable Gains Act 1992 (c.12) (“TCGA 1992”), s 290(3) and Sch 12, effective for the tax year 1992-93 and subsequent years of assessment.⁵ This meant that (but for the provisions in the Interpretation Act 1978)⁶ *sections 228, 400(4) and 406(6)* of ITA 1952 would have ceased to be saved. However, by section 16(1) of the Interpretation Act “the previous operation of the enactment repealed” was not affected by the repeal “unless the contrary intention appears”, which meant that the savings probably remained intact. *Sections 228, 400(4) and 406(6)* were not therefore repealed by operation of ICTA 1988 or TCGA 1992. As a result of the policy decision to repeal the savings provisions through ICTA 1970, *sections 228, 400(4) and 406(6) of ITA 1952* are now otiose and can be repealed.

5. Today, the taxation of income accumulated under a trust (and the allied reliefs) is governed, in particular, by Part 9 of the Income Tax Act 2007 (c.3) (“ITA 2007”).

Provisional Collection of Taxes Act 1968

6. The Provisional Collection of Taxes Act 1968 (c.2) (“PCTA 1968”) was designed to consolidate the 1913 Act of the same name and certain other connected statutes.

⁴ See ICTA 1988, s 843.

⁵ See TCGA 1992, s 289(1). The commencement provision is subject to the caveat “Except where the context otherwise requires”, although that does not appear to make a difference in the present context.

⁶ 1978 (c.30). TCGA 1992, s 290(4) states specifically that “The provisions of this Part of this Act are without prejudice to the provisions of the Interpretation Act 1978 as respects the effect of repeals.”

7. Section 1 of PCTA 1968 contained a provision whereby House of Commons' resolutions affecting income tax, corporation tax, VAT and various other existing taxes and duties⁷ (whether that was for the renewal, variation or abolition of such taxes) were deemed to have statutory effect on a temporary basis whilst the enabling Bill completed its parliamentary stages.

8. The section 1 deeming provision was supplemented by the *Finance Act 1985* (c.54) ("FA 1985"), s 97 which inserted a subsection (1A) into section 1 of PCTA 1968. The new subsection extended the reach of the 1968 Act to what were described in the marginal note as "reduced and composite rates", being amounts payable as income tax on building society dividends and interest,⁸ and on bank deposit interest.⁹

9. Section 1 of PCTA 1968 (as amended) has since been subject to qualified amendment and partial repeal by the *Finance Act 1993* (c.34) ("FA 1993"). Section 205(1), (3) of FA 1993 provided that section 1(1A) was to be "omitted".¹⁰ Section 213 and Schedule 23 Part 6 (statutory effect of resolutions etc) provided that - amongst other things - subsection (1A) in section 1 was to be repealed. However, the repeal was qualified by the statement that repeals in the PCTA 1968 were to "have effect in accordance with section 205 of this [1993] Act". Section 205(7) provided that the section was to apply only in relation to resolutions passed after the date of the Act, *ie* 27 July 1993.

10. As a consequence, both the omission and the repeal do not apply for operations of PCTA 1968 up to 27 July 1993. To that extent section 1(1A) of PCTA 1968 and section 97 of FA 1985 were not repealed.

11. Today, the provisions in *section 1(1A) of PCTA 1968*, and the amending provision in *section 97 of FA 1985*, are no longer required, even for the period leading up to 27 July 1993. They can now be repealed. Their repeal will not adversely affect the previous operation of the provisions. First, they were designed to be of temporary effect only, pending enactment of the enabling Bill. In that sense they are spent. And

⁷ The nature and scope of the taxes and duties as set out in the original version of the Act have since been amended by later taxation statutes (extending it, for example, to climate change levy, landfill tax and aggregates tax).

⁸ Income and Corporation Taxes Act 1970 (c.10), s 343.

⁹ Finance Act 1984 (c.43) ("FA 1984"), s 27.

¹⁰ Other subsections in section 205 of FA 1993 amended subsections (1) and (5) in section 1 of PCTA 1968. They are not relevant for present purposes.

secondly, operation of the Interpretation Act 1978, s 16(1) protects the previous operation of the enactments, regardless of subsequent repeal.

12. For the avoidance of doubt it would also be wise to effect two very minor repeals within FA 1993.

13. The repeal of section 1(1A) of PCTA 1968 by *Schedule 23 Part 6 to FA 1993* should itself be repealed because of the qualifying words used at the foot of Part 6.¹¹ Secondly, *section 205(3) of FA 1993* - which simply omitted section 1(1A) of PCTA 1968 but did not repeal it - should also now be repealed as spent.

Finance Act 1969

14. Section 228 of ITA 1952 had also been limited by *section 11(5)* of the Finance Act 1969 (c.32) ("FA 1969"). That provision (dealing with accumulation settlements) provided that, for the purposes of section 228 and in assessing relief, no account was to be taken of tax paid on income or of relief entitlement "for a year of assessment beginning after the year 1968-69". Although the remainder of section 11 of FA 1969 had been repealed by ICTA 1970¹² (because it fell within Part 2 of the 1969 Act), section 11(5) had survived by a specific saving provision in section 537(1) of, and Schedule 14 paragraph 1 to, ICTA 1970.¹³ *Section 11(5)* remains alive. It can now be repealed.

15. *Section 60* of the FA 1969 has been neither amended nor repealed. Section 60 gave effect to statutory amendments (set out in FA 1969, Schedule 20) designed to facilitate consolidation of various tax statutes. The remaining unrepealed provision in that schedule (*Schedule 20 paragraph 11*) amended the Inland Revenue Regulation Act 1890¹⁴ ("IRRA 1890") by inserting two provisions (sections 4A, 24(4)).

16. The whole of the IRRA 1890 was repealed by the Commissioners for Revenue and Customs Act 2005 (c.11) ("CRCA 2005"), ss 50(6), 52(2), Sch 4 para 5, Sch 5. However, the 2005 Act failed to repeal the amending provisions in *FA 1969, s 60 and Sch 20 para 11*, which provisions are now unnecessary (and can be repealed).

¹¹ The repeals in Part 6 were expressed to have effect in accordance with FA 1993, s 205 (see above).

¹² See ICTA 1970, s 538(1), Sch 16.

¹³ The section 11(5) limitation on section 228 of ITA 1952 related to "no relief for 1969-70 or later years of assessment".

¹⁴ 53 & 54 Vict. c.21 (1890).

Taxes Management Act 1970

17. Section 43A of the Taxes Management Act 1970 (c.9) ("TMA 1970") was inserted into that Act by the Finance Act 1989 (c.26) ("FA 1989"), s 150, and has since been amended. As amended, the section relates to claims by a taxpayer for relief, and extends the time limits set out in the Act for claims or elections where tax assessments have been made after the closure of the self assessment 'enquiry window' in section 9A of the TMA 1970. Section 43A(2A) was originally inserted by the Finance (No. 2) Act 1992 (c.48) ("F (No. 2) A 1992"), s 20 and Sch 5 paras 9(1), (4) and 10, effective for the tax year 1993-94 and subsequent years of assessment. The new subsection (2A) prevented section 43A from extending the time limits for making an election to transfer married couple's allowance.

18. Subsequently, section 43A(2A) was amended by the Finance Act 2003 (c.14) ("FA 2003"), s 207(2), (3) which extended (by substitution) the types of election which were excluded from the scope of section 43A. The new *Section 43A(2A)(b)* referred to Schedule 13B to the principal Act (ICTA 1988) (relating to children's tax credit),¹⁵ which Schedule had been inserted by the Finance Act 1999 (c.16) ("FA 1999"), s 30(2), (5) and Sch 3 (and was subsequently repealed by the Tax Credits Act 2002 (c.21) ("TCA 2002"), s 60 and Sch 6).¹⁶ Schedule 13B provided that, where a child lived with more than one adult, those adults could make election as to entitlement to children's tax credit.

19. *Section 43A(2A)(b)* of the TMA 1970 was amended by the Income Tax Act 2007 (c.3) ("ITA 2007"), ss 1027, 1034 and Sch 1 paras 242, 254(c) so that, for the tax year 2007-08 onwards, reference in paragraph (b) to Schedule 13B to the "principal Act" would be explicit.

20. Because section 257AA of, and Schedule 13B to, ICTA 1988 had been repealed by the TCA 2002, Sch 6 with effect from 6 April 2003,¹⁷ the reference to Schedule 13B in *section 43A(2A)(b) of the TMA 1970* (and thus the paragraph itself) has become obsolete. However, that obsolescence only came about on the expiry of the period during which elections and assessments could be made. By section 34 of the TMA 1970 (as originally drafted) the ordinary time limit for assessment to tax was

¹⁵ Schedule 13B was given effect by the new section 257AA(5) of ICTA 1988.

¹⁶ Schedule 6 to the TCA 2002 also repealed the words "or under Schedule 13B to that Act (elections as to transfer of children's tax credit)" in section 43A(2A) of the TMA 1970.

¹⁷ Commencement order for section 60 repeals made under section 61 of the Act: see the Tax Credits Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 (2003 No. 962), art 2(3)(c),(e) and Sch 1.

(then) 6 years from the end of the year of assessment to which the assessment relates.¹⁸ On the basis that the last year of assessment for which a Schedule 13B election could be made ended on 5 April 2003 no further assessments could be made after 5 April 2009. By section 43A(2) one further year for a claim or election to be made was permitted. That takes the cut-off time to 5 April 2010. The time limit has therefore passed, and *section 43A(2A)(b)* has become spent. The paragraph may now be repealed.

21. As a consequence of the repeal above, the amending provisions in *section 207(2)(b) of the Finance Act 2003* and in *Schedule 1 paragraph 254(c) to the Income Tax Act 2007* may also be repealed.

Finance Act 1973

22. *Schedule 16A to the Finance Act 1973* (c.51) ("FA 1973") was inserted by the Finance Act 1988 (c.39) ("FA 1988"), s 58(2), (4)(b), (5) and Sch 5, effective for the years 1986-87 and 1987-88, and provided for the assessment and collection of tax in respect of underwriters.

23. At the same time the text of the same schedule was inserted into the Income and Corporation Taxes Act 1988 (c.1) ("ICTA 1988") as Schedule 19A.¹⁹

24. Schedule 19A to ICTA 1988 was repealed by Finance Act 1993 (c.34) ("FA 1993"), s 213 and Sch 23 Pt 3(12) and n5, with effect for the year 1992-93 and subsequent years of assessment. It was operative, therefore, only for the five tax years 1988-89 to 1992-93. Schedule 19A was replaced by Schedule 19 to FA 1993, by virtue of section 173 of that Act.²⁰

25. Section 39 of, and Schedule 16 to, FA 1973 governed the income tax and capital gains tax arrangements for underwriting members of Lloyd's or of other approved associations. Those provisions were repealed by ICTA 1988, s 844 and Sch 31, effective from 1988-89 and subsequent years of assessment, which Act also

¹⁸ The 6-year period was reduced to 4 years by the Finance Act 2008 (c.9) ("FA 2008"), s 118 and Sch 39 paras 1, 7(1),(3), as from - in the main - 1 April 2010.

¹⁹ Schedule 19A was inserted by FA 1988, s 58(4)(a), (5) and Sch 5, effective for 1988-89 and subsequent years of assessment.

²⁰ Section 173(2) of FA 1993 specifically states that Schedule 19 superseded Schedule 19A to ICTA 1988. Section 173 and Schedule 19 were themselves repealed by sections 45(1), 70 of, and Schedule 11 Part 2(11) to, Finance (No. 2) Act 2005 (c.22).

replaced them with a code on underwriters in sections 450 to 457 (discussed below in the paragraphs on the Finance Act 1988).

26. Schedules 16 and 16A to the FA 1973 had an obvious nexus, which has since been broken by repeal of Schedule 16. Similarly, Schedule 16A to the FA 1973 and Schedule 19A to ICTA 1988 had a nexus by virtue of their textual coincidence. But Schedule 19A was repealed in 1993 (see above), leaving in place Schedule 16A to FA 1973 (inserted by FA 1988) and the new code for underwriters in sections 171 to 184 of, and Schedules 19 and 20 to, FA 1993. The new code created a comprehensive assessment and collection regime, supplemented through regulations made under section 182, which would operate from the year 1992-93 and onwards.

27. Schedule 16A had a restricted lifespan, becoming spent after the end of the year 1987-88. Because *Schedule 16A to FA 1973* is now spent (and superseded) it can be repealed.

28. As a consequence of this recommended repeal, various other provisions in the *Finance Act 1988* (c.39) should also be repealed. They are -

- section 58(4)(b) of FA 1988, which inserted the provisions of Schedule 5 into FA 1973 as the new Schedule 16A. Because later in this note section 58(4)(a) is recommended for repeal (see under Finance Act 1988, below), the whole of *section 58(4)* can thus be repealed;
- within section 58(5) of FA 1988, reference to section 58(2), (3), (4)(b). Section 58(2), (3) can also be repealed as the subsections refer to FA 1993, s 39 and Schedules 16 and 16A, which have been repealed or are recommended for repeal now. Because the first part of section 58(5) is also recommended for repeal later in this note, the whole of *section 58(5)* can be repealed as spent;
- *Schedule 5 to FA 1988*, which became the new Schedule 16A, and which now becomes redundant as a whole.

National Insurance Surcharge Act 1976

29. The *National Insurance Surcharge Act 1976* (c.85) (“NISA 1976”) was a very short statute. It was enacted “to impose a surcharge, payable into the Consolidated Fund, on secondary Class 1 contributions” made under earlier social security

legislation.²¹ The Act imposed a 2% surcharge based on an individual's earnings, effective from April 1977.²²

30. NISA 1976 was repealed by the Finance Act 1984 (c.43) ("FA 1984"): section 128(6) and Schedule 23 Part 11.²³ However, although the repeal was of the whole Act, it took effect only in respect of earnings on or after 6 April 1985. In other words, it was a qualified repeal with an in-built partial savings provision.

31. Section 117 of FA 1984 also formally abolished the surcharge payable under NISA 1976, in two stages: for earnings paid on or after 1 October 1984, and (for contributions payable by certain bodies)²⁴ for earnings paid on or after 6 April 1985. Section 117 remains on the statute book.

32. In a technical sense the repeal of NISA 1976 is not yet complete. The Act needs to be repealed in whole, without qualification. The effect of such repeal would not be to invalidate retrospectively the surcharge arrangements imposed from 1977 to 1985.²⁵

33. Section 117 of FA 1984 also requires repeal. Its abolition of the surcharge is now spent, and the section is no longer of practical utility.

Finance Act 1984

34. Section 117 of the Finance Act 1984 (c.43) ("FA 1984"), as described above, abolished the surcharge payable under NISA 1976. As a consequence of the proposed repeal of the whole of NISA 1976, section 117 of FA 1984 is now spent and should also be repealed.

Finance Act 1985

35. Section 97 of the Finance Act 1985 (c.54) ("FA 1985") inserted a new subsection (1A) into section 1 of the Provisional Collection of Taxes Act 1968 (c.2) ("PCTA 1968"). As explained earlier in this note, neither section 1(1A) of PCTA 1968

²¹ See long title to NISA 1976. The social security legislation which imposed liability to pay national insurance contributions was the Social Security Act 1975 (c.14) for Great Britain and, for Northern Ireland, the Social Security (Northern Ireland) Act 1975 (c.15).

²² NISA 1976, s 1.

²³ Section 128(6) made clear that repeals were "subject to any provision at the end of any Part of that Schedule [Schedule 23]." The effective date for the repeals was specified in the footnote to Part 11.

²⁴ The bodies were those mentioned in the Finance Act 1982 (c.39), s 143(4).

²⁵ By virtue of Interpretation Act 1978 (c.30), s 16(1)(b),(c).

nor *section 97* of FA 1985 are now required and, as a consequence, *section 97* can now be repealed.

36. Section 76 of, and *Schedule 22 paragraph 6* to, FA 1985 dealt with deemed interest on certain securities held between specific dates and, more particularly, the power of a tax inspector to require a taxpayer to furnish details of securities held between set dates in 1985 and 1986.

37. The matter is discussed in more detail under the heading “(f) Securities” below. For the reasons explained, the whole of *paragraph 6 of Schedule 22* can now be repealed as unnecessary.

Income and Corporation Taxes Act 1988

(a) Taxation of transactions between a dealing company and a non-dealing (associated) company

38. *Section 774* of the Income and Corporation Taxes Act 1988 (c.1) (“ICTA 1988”) is a taxation anti-avoidance provision relating to transactions between dealing companies and non-dealing companies associated with them. The provision was enacted originally as *section 25(4)* of the Finance Act 1960 (c.44) (“FA 1960”), and it thus predated the introduction of capital gains tax and corporation tax by the Finance Act 1965.

39. The purpose of FA 1960, s 25 was to counter tax avoidance devices which were based on the difference in the treatment, for tax purposes, of companies carrying on trade dealing in investments (a “dealing company”), and companies whose business involved investment holding (an “investment company”). Prior to the FA 1960 a dealing company would be liable to tax on any profits it made on buying and selling investments (with concomitant relief for losses incurred). An investment company, by contrast, would pay neither tax on profits or obtain relief on losses in respect of buying and selling transactions, which made it a useful vehicle for tax avoidance.

40. Where dealing and investment companies were under common control, shares standing below cost in the dealing company’s accounts could be sold to the investment company (the “associated company”),²⁶ producing a loss to the seller dealing company. That loss attracted tax relief to the dealing company which could be used to offset other

²⁶ See FA 1960, s 25(1). The concept of “associated company” was defined in FA 1960, s 43(1), (2), and “dealing company” and “investment company” were defined in section 43(4)(d), (e).

tax liability. On the other hand, any subsequent appreciation of share value in the hands of the purchaser investment company would produce a tax-free capital gain. As a result the controlling body would achieve a double tax benefit.

41. Section 25 was designed to catch the transfer of investments from dealing companies (dealing in securities, land or buildings) to non-dealing companies (ordinary trading or manufacturing) where those companies were under common control. The provision deemed profits in the hands of non-dealing companies to be chargeable Schedule D income.

42. Section 25 of the FA 1960 was superseded by section 486 of the Income and Corporation Taxes Act 1970 (c.10) ("ICTA 1970").²⁷ Section 25 was repealed with savings, and replaced.²⁸ The replacement provisions were:

- section 486(1), which replicated (with some adjustment) the substantive part of section 25(4) containing the deeming provision
- section 486(2), which replicated proviso (a) within section 25(4)
- section 486(3), which replicated proviso (b) within section 25(4)
- section 486(4) - an interpretation provision - which took (in amended form) two definitions from section 43(1), (2) and three definitions from section 43(4)
- section 486(5), which replicated (with some adjustment) section 29, empowering the Commissioners of Inland Revenue to require information relating to transactions to be provided.

Section 25(1) to (3), (5) and (6) were not reproduced within the ICTA 1970 consolidation.

43. Section 486 of ICTA 1970 was, in turn, superseded by *section 774 of ICTA 1988*, which Act was also a tax consolidation statute.²⁹ *Section 774* followed the format of the previous section 486, but again with some minor adjustment.

44. *Section 774(1)(a)* was designed to catch the situation where a dealing company paid an investment-holding company for an option which it subsequently abandoned

²⁷ ICTA 1970 was a consolidating statute for income, corporation and other taxes.

²⁸ The repeal was effected by ICTA 1970, s 538 and Sch 16 (which repealed Part II of the FA 1960). Savings for transactions before 15 April 1969 were effected by ICTA 1970, s 537(1) and Sch 14 para 21(1), (2) insofar as they were governed by section 25 of FA 1969, but excepting section 25(4).

²⁹ ICTA 1970, s 486 was repealed by ICTA 1988, s 844(4) and Sch 31.

prior to the option expiry date (thus foregoing a potential profit). The subsection deemed the deduction a taxable receipt in the hands of the investment company. *Section 774(1)(b)* was directed to the situation where a dealing company sought to waive repayment of a loan to an investment company, thus obtaining tax relief for itself and avoiding tax liability on the part of the investment company.

45. *Section 774 of ICTA 1988* has been amended by the Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”), s 882(1) and Sch 1 paras 1, 310, which made a minor insertion and substitution within *section 774(1)*. Likewise, *section 774(1)* was amended by the Corporation Tax Act 2009 (c.4) (“CTA 2009”), s 1322 and Sch 1 para 225, which substituted reference to “the charge to corporation tax on income” in place of reference to Schedule D in the context of transactions between dealing and associated companies.

46. *Section 774(4)(e)* was amended by the Corporation Tax Act 2010 (c.4) (“CTA 2010”), s 1177 and Sch 1 para 103. That provision amended the definition of “control” in *section 774* by reference to a redefinition set out in *section 1124* of CTA 2010.

47. *Section 774(5)* was omitted and repealed by the Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009.³⁰

48. Since 1988 *section 774* of ICTA 1988 has been superseded by stages:

- by the consolidating Taxation of Chargeable Gains Act 1992 (c.12) (“TCGA 1992”), ss 161,³¹ 173³² which dealt with the appropriation of assets already held “for the purposes of the trade as trading stock” and chargeable gains arising on sale. *Section 161* imposed a taxation charge when a person appropriates an asset to use as trading stock. *Section 173* dealt with the acquisition of an asset as trading stock from within a group of companies, and deemed such disposal

³⁰ SI 2009 No 2035, art 2 and Sch para 22, effective from 13 August 2009.

³¹ TCGA 1992, s 161(3) was subsequently amended by The Income Tax (Trading and Other Income) Act 2005 (Consequential Amendments) Order 2006 (SI 2006 No 959), art 3(1), (3). This Order made several consequential amendments which had been omitted in error from ITTOIA 2005, Sch 1. The amendments resulted from the abolition and replacement of Schedule D for income tax purposes. The article 3 amendments were designed to ensure that *section 161* continued to apply to persons chargeable to income tax.

³² TCGA 1992, s 173 was amended by Finance Act 2000 (c.17), s 102 and Sch 29 paras 11 (which substituted a new *section 173* into TCGA 1992, although only operative from 1 April 2000) and 46(5) (disapplying certain provisions for 51% subsidiary companies within a group); and by Finance Act 2003 (c.14), s 153(1)(b),(4) (substituting certain terms in, amongst other places, TCGA 1992, s 173(3)(b), from 1 January 2003).

and acquisition to be an appropriation caught by the provisions of section 161. These two sections have to be read in combination.

- by CTA 2009, Parts 5 to 7.³³ Part 5 (including sections 354 and 464) rewrote the loan relationships legislation introduced by the Finance Act 1996 (c.8) (“FA 1996”). It set out how profits and deficits arising to a company from its loan relationships are brought into account for corporation tax purposes.³⁴ Part 7 (including section 695) dealt with how profits and losses arising to a company from its “derivative contracts” (including options and futures) are brought into account for corporation tax purposes.³⁵
- Section 695 of CTA 2009 dealt with transfers of value between “connected companies” and, in particular, the taxation consequences for an abandoned option. The section was based on Schedule 26 paragraph 26 to the Finance Act 2002 (c.23) (“FA 2002”), which was repealed and replaced by CTA 2009. The provision had, with different wording, dealt with expiry of options which were classed as derivative contracts. Both provisions were wider in their extent than *section 774(1)(a) of ICTA 1988*, and on that basis the 1988 provision is superseded.
- Section 354 of CTA 2009 dealt with exclusion of debits (for the purpose of bringing into account) for impaired or released connected companies debts. The section would deny to a dealing company relief for the loss in value of its loan to an associated non-dealing company where the loan is either written off or reduced in value because of the lack of creditworthiness of the latter organisation. Section 464 gave priority to Part 5 for corporation tax purposes and, on that basis, *section 774(1)(b)* is superseded.

49. *Section 774 of ICTA 1988* as a whole is now no longer required.

50. As a consequence of this proposed repeal, the amending provisions in *ITTOIA 2005, Sch 1 para 310*, *CTA 2009, Sch 1 para 225* and *CTA 2010, Sch 1 para 103* will also need repealing.

³³ Parts 5 to 7 span sections 292 to 710. Part 5 (sections 292 to 476) deals with loan relationships between a company and another party which give rise to profits (and which are then chargeable to corporation tax). Part 6 (sections 477 to 569) deals with company relationships which are deemed to be treated as loan relationships. And Part 7 (sections 570 to 710) deals with “derivative contracts” which embrace certain forms of option contracts, future contracts (for sale of property with future delivery), and contracts for differences (contracts to make profit or avoid loss by reference to fluctuation in identified property values).

³⁴ See CTA 2009, s 292 for overview of Part 5.

³⁵ See CTA 2009, s 570 for overview of Part 7.

(b) Double taxation relief: withdrawal of tax credits: non-resident companies connected with unitary states

51. Sections 812 to 814 of ICTA 1988 (and section 815) concern the withdrawal of tax credit for certain non-resident companies connected with unitary states. In this context “unitary state”³⁶ means a province, state or other territory outside the United Kingdom in which a company (or an associated company) has a “qualifying presence” and, as a result of which, the company is not entitled to claim tax credit on “qualifying distributions” made to it by UK-based companies. Section 813 dealt with the recovery of tax credits paid incorrectly. Section 814 related to the disallowance of tax relief in certain circumstances. And section 815 gave a power to the Board of Inland Revenue to inspect documents and records held by the foreign parent company.

52. The mechanism of unitary taxation was employed in the United States of America (USA). Under it, certain USA states apportioned the world-wide income of multi-jurisdictional companies (both single companies and associated or interdependent companies who were operating a unitary business) in order to determine the amount of income which should be taxable by individual states. This world-wide unitary taxation approach³⁷ was, in the UK’s view, repugnant to the internationally-accepted principle that tax would be charged in such circumstances by tax authorities on the basis of actual profits arising within the particular state and not by an artificial apportionment approach.

53. Section 54 of, and Schedule 13 to, the Finance Act 1985 (c.54) (“FA 1985”)³⁸ were the forerunners to ICTA 1988, ss 812 to 815. The FA 1985 provisions enabled the UK to take counter measures against states which sought to impose worldwide unitary taxation. Once in force the provisions would allow the Treasury to withdraw the right of certain non-resident companies (companies “having a qualifying presence in a unitary state”)³⁹ to payment of tax credits on qualifying distributions made to them by UK-resident companies.

³⁶ See ICTA 1988, s 812(2) for definition.

³⁷ The approach involved the requiring of companies operating within a particular state (and which formed part of a unitary business) to make a combined report of their group foreign and domestic income. That income was then apportioned to the state by applying the ratio of the group’s property, payroll and sales within that particular state to its profile worldwide. This produced a notional amount which was attributable - for tax purposes - to activities by the group within the state.

³⁸ FA 1985, s 54 and Sch 13 were repealed by ICTA 1988, s 844(4) and Sch 31. Savings were made by section 844(3) and Sch 30 para 20 in respect of the order-making power in FA 1985, s 54(7),(8).

³⁹ See FA 1985, s 54(1), and definition in s 54(4).

54. So far as the USA were concerned, under the double taxation Convention then in being,⁴⁰ certain US corporations which invested in UK-resident companies were given the right to recover an element of tax credit on dividends received from such companies.

55. The purpose behind section 54 and Schedule 13 was to provide the Treasury with the ability to override the provisions in the 1975 Convention and to withdraw the right of recovery for specified states.

56. By section 54(7), (8) the override provisions were not to come into force until an order had been made with the prior approval of the House of Commons.

57. Section 54 and Schedule 13 were repealed and re-enacted in ICTA 1988 as sections 812 to 815. Section 815 (power to inspect documents) was repealed by the Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009,⁴¹ because it duplicated new provisions relating to the obtaining of information by the tax authorities.

58. *Sections 812 to 814* are still extant, but have not been brought into force. Section 812(6) to (9) contain the order-making provisions.

59. The Finance (No. 2) Act 1997 (c.58) ("F (No. 2) A 1997"), s 30 reduced to a negligible amount (from April 1999) the amount of tax credit payment entitlement under a double taxation relief agreement for a non-resident person.⁴² The need for ICTA 1988, ss 812 to 815 thus disappeared, rendering the sections obsolete. *Sections 812 to 814* are now recommended for repeal.

60. ICTA 1988 *sections 812 to 814* had been amended in various ways:

Section 812 was amended by -

- Finance Act 1996 (c.8) ("FA 1996"), s 134, Sch 20 para 38 and s 205, Sch 41 Part 5(10). Schedule 20 paragraph 38(1), (2) and Schedule 41 Part 5(10)

⁴⁰ The Convention was "for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains", incorporated into UK domestic law via The Double Taxation Relief (Taxes on Income) (The United States of America) Order 1980 (SI 1980 No 568) ("the 1980 Order"). The Convention of December 1975 had been amended by three Protocols (made in 1976, 1977 and 1979). Article 10 of the 1975 Convention (as amended in 1979 by Art 3) applied to the taxation of dividends.

⁴¹ SI 2009 No.2035, effective from 13 August 2009.

⁴² Double taxation relief agreements were made under ICTA 1988, s 788. The latest such UK agreement with the USA is contained in the Double Taxation Relief (Taxes on Income) (The United States of America) Order 2002 (SI 2002 No 2848). This order superseded SI 1980 No. 568, above. The Convention was made in July 2001 (art 10 applied to dividends), and was amended by the Protocol of July 2002.

repealed a paragraph in section 812(4), and Schedule 20 paragraph 38(3) amended section 812(7) by textual substitution

- Finance Act 2002 (c.23) (“FA 2002”), s 88(2)(a), which made a minor textual amendment to section 812(2) (amongst other provisions)
- Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”), s 882(1), Sch 1 para 326, which amended section 812(1) by substituting references in the text to the 2005 Act and to F (No. 2) A 1997
- Income Tax Act 2007 (c.3) (“ITA 2007”), s 1027 and Sch 1 para 201, which substituted a paragraph in section 812(5)
- Corporation Tax Act 2010 (c.4) (“CTA 2010”), s 1177 and Sch 1 para 116, which substituted references to sections of the CTA 2010 in section 812(5)(c), (d)⁴³
- Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”), s 374 and Sch 8 para 30, which amended section 812(1)(b) by substituting reference in the text to section 2(1) of TIOPA 2010.⁴⁴

Section 813 was amended by -

- Finance Act 1998 (c.36) (“FA 1998”), s 31(5), Sch 3 para 37, and s 165, Sch 27 Pt 3(2), which repealed paragraph (b) in section 813(6).⁴⁵

Section 814 was amended by -

- Finance Act 2003 (c.14) (“FA 2003”), s 153(2)(a), which provided that section 814(1) (amongst other provisions) was to be construed in a particular way in relation to companies⁴⁶
- TIOPA 2010, s 374 and Sch 8 para 31, which amended section 814(1)(a) by substituting in the text reference to section 2(1) of TIOPA 2010.⁴⁷

61. As a consequence of the proposed repeal of *sections 812 to 814* of ICTA 1988, various of the amending provisions shown above will also need repealing.⁴⁸

⁴³ The amendment took effect, for corporation tax purposes, for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years: see CTA 2010, s 1184.

⁴⁴ The amendment took effect from 18 March 2010 (the date the Act was passed): see TIOPA 2010, s 381(2)(d) referring to section 374 so far as it related to the various amendments.

⁴⁵ Because this amendment of section 813 involved only a repeal within the section, the amending provision in the FA 1998 does not itself require repeal when section 813 goes.

⁴⁶ This construction was to take effect only for accounting periods on or after 1 January 2003: see FA 2003, s 153(4).

⁴⁷ The amendment took effect from 18 March 2010 (the date the Act was passed): see TIOPA 2010, s 381(2)(d) referring to section 374 so far as it related to the various amendments.

⁴⁸ The repeal within FA 2003, s 153(2)(a) will only involve omitting “, 814(1)” from the section.

62. One provision in FA 1985, s 54, kept alive by ICTA 1988, also requires repeal. Section 54(7), (8) (the Treasury's order-making power)⁴⁹ was saved by ICTA 1988, s 844(3), Sch 30 para 20, even though a further order-making power appeared in ICTA 1988, s 812(6)-(9). The saving provision in ICTA 1988 can now be repealed.⁵⁰

63. Finally, references elsewhere within ICTA 1988 to sections 812 to 814 will require repeal. Thus, in section 843(4) - on commencement of the Act - provision was made for the section to have effect except as specifically provided for in other listed sections. Reference to "and 812" in this context should be repealed.

(c) Personal reliefs: qualifying life insurance policies

64. Section 267 of, and Schedule 15 to, ICTA 1988 defined a "qualifying policy" for the purpose of determining whether income tax relief is available under the 1988 Act to an individual on premiums paid for life insurance cover. Schedule 15 set down the "qualifying conditions" which help determine whether an insurance policy is a "qualifying policy" (at paragraphs 1 to 20A), the certification process for such policies (paragraphs 21 and 22, both due to be repealed prospectively from an "appointed date"),⁵¹ and the arrangements for insurance policies issued by non-resident companies (paragraphs 23 to 27).⁵²

65. Under Schedule 15 paragraph 24(2), (4) a new "non-resident policy" (a policy issued by "a company resident outside the United Kingdom") was not to be certified or deemed a "qualifying policy" until certain conditions had been fulfilled. Those conditions were set out in the alternative in paragraph 24 sub-para (3) and (4) -

- sub-para (3) required (amongst other things) that the policy-issuing company should carry on business lawfully within the UK and that premiums were to be paid to the company's "permanent establishment" within the UK;⁵³
- sub-para (4) required (alternatively) that the policy-holder should be resident in the UK and that the policy-issuing company's investment income should

⁴⁹ The power was to make an order or orders relating to the chargeable periods ending before 6 April 1988.

⁵⁰ FA 1985, s 54 and Sch 13 were repealed by ICTA 1988, s 844(4), Sch 31, subject to the saving.

⁵¹ See Finance Act 1995 (c.4) ("FA 1995"), s 55 (as amended) and s 162, Sch 29 Pt 8(7). No date has, as yet, been appointed for the repeals. The original date was to have been 5 May 1996.

⁵² Portions of Schedule 15 paragraph 24 have been amended prospectively in line with the FA 1995, s 55 (see above) adjustments, but these also have not yet been brought into force.

⁵³ Reference to "permanent establishment" was substituted for "branch" by the Finance Act 2003, s 155 and Sch 27 para 1.

(pursuant to section 445) be charged to Schedule D Case III corporation tax.

66. ICTA 1988, s 445 originally provided that income of an “overseas life insurance company” derived from its life assurance fund investments should be deemed profits chargeable to Schedule D Case III corporation tax. Section 445 set out the formula by which the charge would be applied. Section 445 was later repealed by Finance Act 1993 (c.34) (“FA 1993”), ss 103(2)(a),(3), 213 and Sch 23 Pt 3(9) for accounting periods beginning after 31 December 1992.

67. As a consequence of the FA 1993 repeal, the two references to section 445 in *Schedule 15 paragraph 24(4)* are now superseded.

68. On the assumption that Government is not minded to bring into force the repeals of Schedule 15 paragraph 24(2) and (4) (leaving in place only the first of the two conditions, as set out in paragraph 24(3)), the following references to section 445 in paragraph 24(4) need removing:

“; and (b) that the income of the issuing company from the investments of its life assurance fund is, by virtue of section 445, charged to corporation tax under Case III of Schedule D; and expressions used in paragraph (b) above have the same meaning as in section 445(1)”

In order that the opening words of sub-paragraph (4) continue to make sense it would be more effective to repeal the whole of paragraph 24(4) and to substitute (by a specific saving) the words:

“(4) The condition secondly referred to in sub-paragraph (2) above is that the policy holder is resident in the United Kingdom.”

This textual change is now proposed (see under Consequential and Connected Provisions in the Schedule to the draft Bill).

(d) Social security benefits

69. ICTA 1988, s 844 and Sch 30 set out transitional provisions and savings. Paragraph 9 of Schedule 30 dealt with social security benefits and, more particularly, arrangements relating to taxation of supplementary allowance under supplementary benefits legislation⁵⁴ before the coming into force of regulations under the Social Security Act 1986 (c.50), s 20 and the Social Security (Northern Ireland) Order 1986,

⁵⁴ The Supplementary Benefits Act 1976 and the Supplementary Benefits (Northern Ireland) Order 1977.

art 21⁵⁵ (which provisions created income-related benefits schemes, including income support).

70. Paragraph 9 deactivated certain provisions relating to income support,⁵⁶ and activated substitutions and additions within ICTA 1988,⁵⁷ for the period *before* the coming into force of the regulations. The regulations were the Income Support (General) Regulations 1987⁵⁸ and the Family Credit (General) Regulations 1987,⁵⁹ each of which came into force on 11 April 1988. On their coming into force paragraph 9 then became spent (although it remained unrepealed).⁶⁰

71. Section 20 of the Social Security Act 1986 was repealed by the Social Security (Consequential Provisions) Act 1992 (c.6), s 3 and Sch 1.

72. ICTA 1988, ss 151, 204 and 617(2) were repealed by the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”), s 722, Sch 6 paras 22, 30 and 87(2), and s 724, Sch 8 Pt 1; and the sidenote to ICTA 1988, s 152 was relabelled “Notification of taxable amount of certain benefits” by the same Act.⁶¹

73. *ICTA 1988 Schedule 30 paragraph 9* can now be repealed.

(e) Double taxation arrangements

74. ICTA 1988, s 844(4), Sch 31 repealed the Finance (No. 2) Act 1979 (c.47) (“F (No. 2) A 1979”), s 16. Section 16 had made provision for arrangements to implement the United States Double Taxation Convention (“for the avoidance of double taxation and the prevention of fiscal evasion”) of December 1975. The arrangements were to be effected through an Order in Council made under the Income and Corporation Taxes Act 1970 (c.10) (“ICTA 1970”), s 497 (as amended).⁶² ICTA 1970, s 497 provided a

⁵⁵ See SI 1986 No.1888 (NI 18).

⁵⁶ ICTA 1988, ss 151, 152 (payments of income support to be chargeable to income tax in specified circumstances); and ICTA Sch 31 (repeals, insofar as they related to Finance Act 1981 (c.35), ss 27, 28). None of these provisions was to have effect.

⁵⁷ ICTA 1988, s 204 para (b) was to be substituted and added to; and ICTA 1988, s 617(2) para (a) was to be substituted and added to.

⁵⁸ SI 1987 No 1967.

⁵⁹ SI 1987 No 1973.

⁶⁰ In *Halsbury's Statutes of England and Wales* (4th edn, 2008 reissue) vol 44(1) - which reproduces ICTA 1988 - Schedule 30 paras 9 to 12 to that Act are not printed at p1206. The annotation to paragraph 9 (on p1208) indicates that, on the coming into force of the two sets of 1987 Regulations (on 11 April 1988), paragraph 9 “became spent”.

⁶¹ See ITEPA 2003, Sch 6 para 23.

⁶² The December 1975 Convention (together with amending Protocols of August 1976, March 1977 and March 1979) was given legal effect by the Double Taxation Relief (Taxes on Income) (The United States of

general power to the Queen to make an Order in Council declaring that where double taxation relief arrangements had been made with an overseas government those arrangements should be given legal effect within the United Kingdom. Section 497 was subsequently repealed by ICTA 1988, s 844 and Sch 31, but the power to make an Order in Council was replaced by ICTA 1988, s 788.

75. ICTA 1988, s 844(3) and *Sch 30 para 14* provided that the repeal of section 16 was not to “prejudice the effect of any Order in Council which gives effect to arrangements contained in the Convention mentioned in that section [the December 1975 Convention]” and which was made under ICTA 1970, s 497.

76. The 1975 Convention was superseded by the July 2001 Convention (and amending July 2002 Protocol). The 1975 Convention and its amendments expressly ceased to have effect on the coming into effect of the 2001 Convention.⁶³ The Order in Council giving effect to the 2001 Convention⁶⁴ was made under ICTA 1988, s 788 (the primary legislation replacement provision).

77. Given that the 1980 Order in Council (and the 1975 Convention) was superseded by the 2002 Order in Council (and the 2001 Convention), and it was only the 1980 Order which gave effect to arrangements set out in the 1975 Convention (as mentioned specifically in F (No. 2) A 1979, s 16), by July 2002 the repeal of section 16 by ICTA 1988⁶⁵ could no longer affect either the 1980 Order or the 1975 Convention. On that basis the saving provision in ICTA 1988, *Sch 30 para 14* had become spent (subject to one caveat) and can now be repealed.

78. The caveat is this. Article 29 of the 2001 Convention contained two provisos. First, by article 29(4) specific arrangements were made for teachers who were provided with benefits under the 1975 Convention (art 20). This meant that the 1975 Convention benefits continued to run, even when the 2001 Convention had come into effect.

America) Order 1980 (SI 1980 No 568) from April 1980 (see above). The 1980 Order in Council sets out the text of the Convention and Protocols in its Schedule.

⁶³ See the Double Taxation Relief (Taxes on Income) (The United States of America) Order 2002 (SI 2002 No 2848), which Order in Council gave legal effect in the UK to the 2001 Convention and 2002 Protocol. Article 29(3) of the 2001 Convention (which related to entry into force) provided specifically that the December 1975 Convention (as modified by later Protocols) “shall cease to have effect in relation to any tax with effect from the date on which this Convention has effect in relation to that tax.” Although article 29(3) was amended by article V(1) of the July 2002 Protocol, the substituted paragraph 3(a) still made provision for the 1975 Convention terminating on a set date following the new Convention entering into force.

⁶⁴ SI 2002 No 2848 (above).

⁶⁵ ICTA 1988, s 844(4), (6) and Sch 31.

However, the July 2002 Protocol deleted article 29(4) of the 2001 Convention. Nothing replaced it.

79. Secondly, by article 29(5) students and trainees entitled to benefits under the 1975 Convention (art 21) had that entitlement protected “as if” the Convention had remained in force. Article 29(5) was not deleted by the July 2002 Protocol, but article 29(5) was renumbered 29(4).⁶⁶ Re-numbered article 29(4) is still in force by virtue of, originally, ICTA 1988, s 788⁶⁷ (and Finance Act 2006 (c.25) (“FA 2006”), s 173(8)⁶⁸). The need for the saving in ICTA 1988 *Sch 30 para 14* has been superseded. Today, the relevant legislation is contained in the Taxation (International and Other Provisions) Act 2010.⁶⁹

(f) Securities

80. The Finance Act 1985 (c.54) (“FA 1985”), s 76 and Sch 22 dealt with deemed interest on certain securities held between specific dates. Interest was deemed to have been received by a taxpayer on “chargeable securities” even if it had not been received as such, and the profits or gains would be chargeable to tax under Schedule D Case VI. By *paragraph 6 of Schedule 22* an inspector was entitled to serve on the taxpayer notice requiring the furnishing of particulars of securities held during “the year”.⁷⁰ The year, as defined in paragraph 1(1), meant the period 28 February 1985 to 27 February 1986.

81. Section 76 of, and Schedule 22 to, FA 1985 were repealed as spent by *ICTA 1988*, s 844, *Sch 30 para 15* and Sch 31,⁷¹ with savings. *Paragraph 15 of Schedule 30* provided that the repeal of FA 1985, Sch 22 “shall not affect the continued operation of paragraph 6 of that Schedule in relation to the holding of securities by any person at any time during the year (within the meaning of that Schedule)”. In other words, the

⁶⁶ See the July 2002 Protocol, Art V(2), set out in the Schedule to SI 2002 No 2848 (above) at Part 2.

⁶⁷ ICTA 1988, s 788 has now been repealed by the Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”), s 378 and Sch 10 Pt 1, subject to savings in section 377 and Schedule 9, and replaced by sections 2 to 7 of that 2010 Act. The purpose behind Schedule 9 paragraph 3 was to ensure that the rewrite and repeal of section 788 did not inadvertently switch off the UK’s entire tax treaty network.

⁶⁸ Sections 173 to 176 dealt with international tax arrangements. Section 173(8),(10) kept alive provisions included in an Order in Council made under ICTA 1988, s 788 “as if included” in an Order made under section 173.

⁶⁹ 2010 (c.8) (“TIOPA 2010”) (see above).

⁷⁰ Schedule 22 paragraph 6(1) empowered an inspector to serve a notice or notices requiring the provision of particulars of securities held by a taxpayer, and required the taxpayer to respond within a set time (with a minimum of 28 days). Where the taxpayer defaulted then, by paragraph 6(2), the inspector was entitled to make an estimate of the annual profits or gains received.

⁷¹ Schedule 31 repealed FA 1985 ss 73 to 77 and Schedule 22, which provisions all dealt with the taxation of securities.

information requisition provisions in paragraph 6 were to remain in place, but only for the year ended 27 February 1986 as described.

82. Paragraph 6(3) had also provided that there was to be a cross-reference to paragraph 6(1) in the Table in the Taxes Management Act 1970 (c.9) ("TMA 1970"), s 98 by insertion of the reference in the Table. Section 98 dealt with the requiring of the making of special returns (and made provision for the imposition of penalties for default). The Table in section 98 was substituted by ICTA 1988, s 844 and Sch 29 para 9, which simply repeated the reference to FA 1985, Sch 22 para 6(1).⁷²

83. The reference to paragraph 6(1) was eventually repealed, however, by the Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009,⁷³ art 2 and Sch para 8(3)(g), which Order omitted the entry from the Table in TMA 1970, s 98 as substituted in 1988. The omission rendered the original *paragraph 6(3) of Schedule 22* unnecessary (and sub-paragraph (3) can now be formally repealed).

84. As a consequence of the removal of paragraph 6(1) from the Table, sub-paragraph (1) can now be formally repealed. The power of an inspector to make an estimate of annual profits or gains under paragraph 6(2) equally ceases to have value (and sub-paragraph (2) should also now be repealed).

85. Finally, having repealed the whole of *paragraph 6 of Schedule 22* to FA 1985, the saving provision in ICTA 1988, *Schedule 30 paragraph 15* should also be repealed.

(g) Emoluments

86. The Finance Act 1974 (c.30) ("FA 1974"), s 21 dealt with the taxation of emoluments arising from office or employment. The section adjusted (by substitution), amongst other things, the cases (Cases I and II) in Schedule E⁷⁴ which governed chargeability to tax on work undertaken in "the chargeable period" for persons resident and non-resident in the UK, subject to the deductions or exceptions spelt out in FA 1974, Sch 2. By section 21(9) the section was to have effect for the years of assessment 1974-75 and beyond, but it expressly provided that:

⁷² TMA 1970, s 98 was not itself repealed by ICTA 1988, s 844(4) and Sch 31.

⁷³ SI 2009 No 2035, which came into force on 13 August 2009. The Order was made under the powers in the Finance Act 2009 (c.10) ("FA 2009"), s 95(2)-(5).

⁷⁴ Then set out in Income and Corporation Taxes Act 1970 (c.10) ("ICTA 1970") (now repealed), s 181.

“tax shall not be chargeable for any of those years under Case III of Schedule E on emoluments which, if this section had had effect for earlier years, would have fallen under Case I or Case II”.

87. Although ICTA 1988 repealed section 21 of FA 1974 (see ICTA 1988, s 844(4) and Sch 31) it also incorporated transitional provisions and savings (ICTA 1988, s 844(3) and Sch 30). By *Schedule 30 paragraph 19* to ICTA 1988 the repeal of section 21 was not to affect “the taxation of emoluments which if that section had been in force before 1973-74 would have fallen within Case I or Case II of Schedule E, and, accordingly, any such emoluments shall not be chargeable under Case III of Schedule E”.

88. Case III of Schedule E provided for the chargeability to tax of emoluments received in the UK for work undertaken by a person resident in the UK where the emoluments were earned in the chargeable period or *before* that period.

89. The deeming provision in ICTA 1988 *Sch 30 para 19* meant that emoluments earned in 1972-73 and before were to remain exempt from a charge under Case III.

90. Given that the protection afforded by *Schedule 30 paragraph 19* applied to years which occurred (as at 2012) some 40 years ago, H. M. Revenue and Customs believe that the provisions are spent,⁷⁵ and that *paragraph 19* can now safely be repealed.

Finance Act 1988

(a) Non-residents' personal reliefs

91. *Section 31 of the Finance Act 1988 (c.39) (“FA 1988”)* dealt with the denial of personal reliefs to nationals not resident in the UK. Its purpose was to amend the basic provisions then set out in ICTA 1988, s 278 (and to repeal various subsections), although those amendments and repeals were only to take effect for the years of assessment 1990-91 and subsequently.

92. Section 31 of FA 1988 was repealed in part by the Tax and Civil Partnership Regulations 2005 (SI 2005 No 3229), regs 47, 60(2), which provided that *section 31(2)*

⁷⁵ HMRC are of the view that, even if a tax loss were discovered for the years before 1973-74, assessment and recovery would be time-barred under TMA 1970, ss 29, 36(1A).

should be omitted, and that amendment should be made to ICTA 1988, s 278 (so that reference to a “widower” should include reference to a “surviving civil partner”).

93. *Section 31(3)* inserted into ICTA 1988, s 278 a new subsection (2A) denying relief to a husband not resident in the UK. Section 278(2A) of ICTA 1988 has since been repealed by Finance Act 1999 (c.16) (“FA 1999”), s 139 and Sch 20 Part 3(3) and n 2 (Married couple’s allowance), with effect from the year 2000-01 and subsequent years of assessment. Section 31(3) is therefore also impliedly repealed.

94. *Section 31(4)* provided for the omission of subsections (3) to (7) from ICTA 1988, s 278. That provision is now spent (and its repeal will not reinstate the omitted subsections).⁷⁶

95. The only live provision remaining in section 31 is the time limitation on its taking effect (*section 31(1)*). Given the repeal of the remaining subsections, subsection (1) now has no practical value. The whole of *section 31* can therefore be repealed.

(b) Underwriters

96. Section 450 of ICTA 1988 dealt with the computation of profits or gains, the set-off of losses, and the costs of reinsurance against losses, arising from Lloyd’s underwriting members’ businesses (and premiums trust funds). Section 451 provided a regulation-making power to the Commissioners of Inland Revenue to facilitate, amongst other things, the assessment and collection of tax charged under section 450. And section 452 dealt with special reserve funds and, in particular, the taxation of underwriting members of Lloyd’s where certified arrangements had been put in place for the creation of such funds, vested in trustees, for the purpose of capital investment.

97. Sections 450 to 452 of ICTA 1988 were amended by the Finance Act 1988 (c.39), ss 58 to 61 and Schedule 5 in the following ways:

- *section 58(1), (4)(a)* substituted - for subsection (2) of section 450 - new subsections (2) and (2A), and inserted into ICTA (*via* FA 1988, s 58(4)(a),(5) and Sch 5) a new Schedule 19A. These amendments made profits or gains

⁷⁶ The repeal of ICTA 1988, s 278(3)-(7) was formally effected by FA 1988, s 148 and Sch 14 Pt 4 and n 4 (which provided that the repeals in section 278 “have effect for the year 1990-91 and subsequent years of assessment”).

arising from an underwriting business chargeable to tax under Schedule D Case I.⁷⁷

- *section 59(1)* substituted - for subsection (4) of section 450 - a new paragraph (b), which clarified the thrust of the subsection and, more particularly, where insurance cover had been effected to indemnify underwriting business losses, made insurance moneys paid out under that cover a trading receipt for the purpose of computing profits or gains in the year of loss.⁷⁸
- *section 60(1)* substituted - for subsection (5) of section 450 - new subsections (5) and (5A), which covered the position where one Lloyd's underwriter, for a premium, agrees to cover another Lloyd's underwriter's underwriting liabilities. The amendment had the effect of recasting more precisely the earlier provisions and, more particularly, restricting the scope for deduction of the premium payable as a legitimate expense.⁷⁹
- *section 61(1)(b)* extended the regulation-making power in subsection (1)(a) of section 451 - by substitution of text - to include making such amendments by regulation to a new Schedule 19A as flowed from changes in the "rules or practice of Lloyd's".⁸⁰
- *section 61(1)(c)* inserted a new subsection (1A) after subsection (1) of section 451 relating to the regulations.
- *section 61(1)(d)* substituted, in section 452(8) (definition of "profit"), reference to section 450 in place of reference to "Case I of Schedule D".

98. Subsequently, sections 450 to 452 of, and Schedule 19A to, ICTA 1988 were repealed by the Finance Act 1993 (c.34) ("FA 1993"), as follows:

- Sections 450 to 457 as a whole (the sections dealing with underwriters) were repealed - in the main without savings - by FA 1993, s 213 and Sch 23 Pt 3(12) and n1.⁸¹ However, by FA 1993, s 182(5), regulations made under section 451, and which were in force before April 1992, were to continue in force for 1992-93 and subsequent years of assessment.

⁷⁷ By FA 1988, s 58(5) these amendments were to have effect for the year 1988-89 and subsequent years of assessment.

⁷⁸ By FA 1988, s 59(3) this amendment was to have effect for the year 1988-89 and subsequent years of assessment.

⁷⁹ Whereas previously under ICTA 1988, s 450(5) the deductibility operated "in relation to premiums payable in connection with the closing of the accounts of a member's business for an underwriting year ending in the year of assessment 1985-86 or any later year of assessment", the recast allowance was restricted to underwriting years ending in 1988-89 or subsequently: see FA 1988, s 60(3)(a).

⁸⁰ ICTA 1988, s 451(1) acquired a new paragraph (aa). The new Schedule 19A to ICTA 1988 was inserted by FA 1988, s 58(4)(a) and Sch 5 (Underwriters: Assessment and Collection of Tax). The amendment took effect for the year 1988-89 and subsequent years of assessment: see FA 1988, s 61(5).

⁸¹ Note 1 in the Schedule made clear that repeal of ICTA 1988, s 450(6) had effect in respect of acquisitions and disposals made after 31 December 1993.

- Schedule 19A was repealed with savings by the same provisions in the FA 1993.⁸²

The repeals were made in consequence of the new scheme for taxation of underwriters implemented through Part 2 Chapter 3 of FA 1993 (discussed later in this note).

99. Although the provisions in the ICTA 1988 were repealed, the amending provisions in the FA 1988 were not (with the exception of section 61, which was later repealed in part by the Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”)).⁸³

100. It is now appropriate to repeal the following provisions in *FA 1988*:

- *section 58(1)*
- In *section 58(4)* the words “ - (a) after Schedule 19 to the Taxes Act 1988 as Schedule 19A; and (b)”
- In *section 58(5)* the words “Subsections (1) and (4)(a) above shall have effect for the year 1988-89 and subsequent years of assessment; and”
- *section 61(1)*
- In *section 61(5)* the words “Subsection (1) above shall have effect for the year 1988-89 and subsequent years of assessment; and”.

The remaining portions of sections 58 to 61, and Schedule 5, have to remain in place because they make amendments to other legislation which is still operational, eg the Finance Act 1972 (c.41), and the Finance Act 1973 (c.51). However, because paragraph (b) in *section 58(4)* and part of *section 58(5)* have already been recommended for repeal (see under Finance Act 1973, above), the whole of those two subsections can now be repealed.

(c) Lease premiums: special relief for individuals

101. Sections 34 to 39 of, and Schedule 2 to, ICTA 1988 dealt with the treatment of premiums payable under a lease, or a contract for a lease, for 50 years or less. Such

⁸² Note 5 in FA 1993 Sch 23 Pt 3(12) stated that the repeal took effect for the year 1992-93 and subsequent assessment years. By FA 1993, s 173(1),(2) and Sch 19, ICTA 1988, Sch 19A was superseded by the new Schedule 19 text from 1992-93 onwards (and see also FA 1993, s 184(3)). By FA 1993, s 173(2),(3), regulations made under the old Schedule 19A paragraph 1 were able to make provision for any year or years of assessment. Finally, FA 1993, Sch 19 was repealed by the Finance (No. 2) Act 2005 (c.22), ss 45(1), 70(1) and Sch 11 Pt 2(11).

⁸³ See ITTOIA 2005, s 884 and Sch 3, which repealed FA 1988, s 61(1)(a) (a provision which had amended ICTA 1988, s 20(2)).

premiums were to be treated as if they were rent or gains chargeable under Case VI of Schedule D.

102. Section 39 provided a saving for leases granted or interests sold before 1963-64, and section 39(3) and Schedule 2 gave special relief from income tax to individuals where the amounts were treated (by virtue of sections 34 to 36) “as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable”. Schedule 2 dealt with the computation of the relief.

103. Section 780 of ICTA 1988 dealt with the taxation of sale and leaseback arrangements, and limitation on tax reliefs. Section 780(5) provided that Schedule 2 to the Act should have effect for the purposes of giving relief to individuals where the amount, by virtue of section 780(3), was treated as “an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease”. As before, Schedule 2 dealt with the computation of the relief.

104. Sections 39(3) and 780(5) of, and Schedule 2 to, ICTA 1988 were repealed by the Finance Act 1988 (c.39) (“FA 1988”), ss 75, 148 and Sch 14 Pt 4. FA 1988, s 75 provided that the provisions in question were not to “have effect for the year 1988-89 or any subsequent year of assessment”.⁸⁴ Section 148 and Sch 14 Pt 4 provided for the repeal of the provisions, subject to note 9 (in Schedule 14) which indicated that the repeals were likewise to “have effect for the year 1988-89 and subsequent years of assessment”.

105. *Section 75 of FA 1988* is now spent and can itself be repealed. No savings are required.

(d) Taxes management

106. Three provisions in the Taxes Management Act 1970 (c.9) (“TMA 1970”) were amended by the Finance Act 1988 (c.39) (“FA 1988”), and were then further amended by later legislation. The TMA 1970 amended provisions were *sections 7, 12 and 29*, plus *section 11A* which was a new section inserted also by the FA 1988.

107. *Section 7* of TMA 1970 dealt with the giving of notice of liability to tax. The section was first amended by *FA 1988, s 120*. Section 120(1) substituted new text for

⁸⁴ Section 75 described the provisions in question - in short-hand - as providing “top-slicing relief where premiums for leases etc. chargeable to income tax”.

the whole of section 7, and section 120(2) stated that the substitution was to have effect “with respect to notices required to be given for the year 1988-89 or any subsequent year of assessment”.

108. Section 7 was later amended by further substitution. The Finance Act 1994 (c.9) (“FA 1994”), s 196 and Sch 19 Pt 1 para 1 substituted text for the whole of section 7, now with the marginal heading “Notice of liability to income tax and capital gains tax”. By paragraph 1(2) the amendment took effect for the year 1995-96 and subsequent years of assessment. The FA 1994 did not, however, formally repeal - in section 258 and Schedule 26 (Repeals) - *section 120 of FA 1988*.

109. *Section 120 of FA 1988* is now superseded and can be repealed.

110. *Section 11A* was inserted into the TMA 1970 (providing for the giving of notice of liability to capital gains tax) by section 122(1) of FA 1988. By section 122(3) of FA 1988 the whole of section 122 was to have effect with respect to notices required to be given for 1988-89 and subsequent years of assessment.

111. Section 11A of TMA 1970 was repealed by FA 1994, ss 199(2), 258 and Sch 26 Pt 5(23) and n4, with effect from 1996-97 and onwards. It was also repealed by the Finance Act 1995 (c.4) (“FA 1995”), ss 115(3), (13), 162 and Sch 29 Pt 8(14) for the previous year, 1995-96, and subsequent years. However, there was no repeal of the inserting provision in FA 1988, s 122(1).

112. *Section 12* of TMA 1970 dealt with information about chargeable gains. It applied sections 7 and 8 to capital gains tax in broadly the same way as they applied to income tax. Section 122(2) of FA 1988 substituted a new subsection (1) in section 12, which subsection dropped the earlier reference to section 7 (in relation to capital gains tax).

113. Section 12 subsection (1) (together with subsection (4)) was repealed by FA 1994, s 258 and Sch 26 Pt 5(23) and n4. The repeals were to have effect in accordance with FA 1994, s 199(2), *ie* they were to have effect for the year 1996-97 and subsequent assessment years. However, there was no repeal of the amending provisions in FA 1988, s 122(2), (3).

114. *Section 122 (in whole) of FA 1988* can now be repealed.

115. Section 29 of TMA 1970 dealt with the procedure for assessment to tax by the inspectorate and the Board of Inland Revenue. Section 29 was amended by FA 1988, s 119, which inserted new subsections (1)(c) and (1A) into the section. These new subsections empowered an inspector to make a best judgment current-year assessment based on actual or estimated income, and then to make a year-end adjustment to the tax charge. FA 1988, s 148 and Sch 14 Pt 8 repealed certain definition words in section 29(8), but otherwise left the section intact.

116. In due course, section 29 was replaced in whole by FA 1994, s 191 (which substituted the text under the marginal heading "Assessment where loss of tax discovered") and s 199 (which, in the context of income and capital gains taxes, gave effect to the substitution for the year 1996-97 and subsequent years of assessment). The FA 1994 did not, however, formally repeal the original version of section 29 of TMA 1970 (which probably did not require repeal as such) or FA 1988, s 119.⁸⁵ FA 1988, s 119, which has now been superseded, should be repealed.

117. On this basis, FA 1988, ss 119, 120 and 122 should all be repealed. Section 121 of the Act (Notice of liability to corporation tax) has already been repealed by the Finance Act 1998 (c.36), ss 117, 165 and Sch 27 Pt 3(28), in relation to accounting periods ending after 30 June 1999.

(e) Married couples: qualifying maintenance payments

118. Section 347B of ICTA 1988 was inserted into that Act by the Finance Act 1988 (c.39) ("FA 1988"), s 36(1), (3). The section provided, in the context of annual payments, that "qualifying maintenance payments" should be deductible from total income in assessing liability to income tax. Subsection (3) of the new section 347B placed a ceiling on the amount which could be deducted, namely, that it was not to exceed the difference between the (higher) married person's relief and the (lower) single person's relief, as then set out in ICTA 1988, s 257(1).⁸⁶ Subsequently section 257(1) became section 257A(1) by virtue of an amendment made by FA 1988, s 33 with effect for the year 1990-91 and subsequent years of assessment. Section 33

⁸⁵ FA 1994, s 258 and Sch 26 (Repeals) contained no reference to TMA 1970, s 29 or to FA 1988, s 119.

⁸⁶ In the original version of section 257(1) the married man's allowance was £3,795 and a single person's allowance was £2,425, the difference being £1,370. The section provided for enhanced allowances based on age thresholds - at 65 and 80.

restructured the shape of the original section 257 by substitution, and revised the personal allowance and the married couple's allowance.⁸⁷

119. FA 1988, s 35 and Sch 3 set out minor and consequential provisions relating to married couples' taxation. By *Schedule 3 paragraph 13*, amendment was made to ICTA 1988 whereby, for the year 1990-91 and subsequent years of assessment, section 347B(3) was to be read so that reference to the difference between the higher and lower relief figures would be replaced by reference to the amount specified in section 257A(1) of ICTA 1988.⁸⁸

120. A decade later ICTA 1988, s 257A(1) was repealed by the Finance Act 1999 (c.16) ("FA 1999"), ss 31(1), (2), (10), 139 and Sch 20 Pt 3(3), with effect for the year 2000-01 and subsequent years of assessment. By section 31(2) (which section restricted married couple's allowance to those reaching age 65 before 2000-01) section 257A(1) ceased to have effect. By section 139 and Schedule 20 the provision was formally repealed from 2000-01 onwards.

121. FA 1999 also amended ICTA 1988, s 347B (and, more particularly, section 347B(3), where reference to ICTA 1988, s 257A(1) - which was then being repealed - was to become reference to ICTA 1988, s 257A(5A): see FA 1999, s 36(4).

122. FA 1999 did not, however, repeal the intermediate amending provision in *Schedule 3 paragraph 13 to FA 1988*. That provision is now superseded and should be repealed.

Finance Act 1989

(a) Underwriters: premiums trust funds, etc.

123. The Finance Act 1989 (c.26) ("FA 1989"), ss 91 and 92 made various changes to existing pieces of tax legislation relating to premiums trust funds.

124. ICTA 1988, ss 710 to 728 had been enacted to deal with transfers of securities with or without accrued interest. Section 725, in particular, dealt with Lloyd's underwriters, and provided a mechanism whereby securities forming part of a

⁸⁷ The allowances were adjusted so that the basic personal allowance became £2,605 and a married man was entitled to an additional £1,490 deduction from total income.

⁸⁸ Which was £1,490.

premiums trust fund were to be treated as transferred on a given date with accrued interest where such entitlement to interest arose.

125. *FA 1989, s 91(1)* inserted two new subsections at the end of *ICTA 1988, s 725*: subsections (10) and (11). Put simply, these two subsections were designed to address the situation where securities had been transferred by premiums trust fund trustees to another person or persons pursuant to a “stock lending” arrangement governed by *ICTA 1988, s 129*. Section 129(3) provided for certain disregards.

126. In due course, the whole of section 725 of *ICTA 1988* was repealed by *Finance Act 1993 (c.34) (“FA 1993”)*, s 213 and Sch 23 Pt 3(12) and n2, for the year 1994 and “subsequent underwriting years”.⁸⁹

127. On that basis, the amendment effected by *FA 1989, s 91(1)* has been superseded and can now be repealed.

128. *FA 1989, s 91(2)* made amendment to the *Capital Gains Tax Act 1979 (c.14) (“CGTA 1979”)*. Sections 140 to 143 of the *CGTA 1979*, as originally enacted, dealt with insurance, and section 142 (in particular) concerned underwriters.⁹⁰ Section 142A had been inserted into *CGTA 1979* as a consequential amendment by *ICTA 1988, s 844* and Sch 29 para 24. This new section dealt with disposal of assets in premiums trust funds from 1972-73 onwards.

129. *FA 1989, s 91(2)* then inserted subsections (4A) and (4B) into section 142A of *CGTA 1979*, in very similar terms to those provisions inserted into *ICTA 1988, s 725* (above).

130. *CGTA 1979, s 142A*, and the amending provision in *FA 1989, s 91(2)*, were both later repealed by the *Taxation of Chargeable Gains Act 1992 (c.12) (“TCGA 1992”)*, s 290 and Sch 12.⁹¹ Section 91(2) has therefore already gone.

⁸⁹ Had *ICTA 1988, s 725* still been alive it would also have been repealed by the *Income Tax Act 2007 (c.3) (“ITA 2007”)*, ss 1031, 1034 and Sch 3 Pt 1 as part of a wider repeal which swept up “Sections 710 to 727A” for the tax year 2007-08 and subsequent tax years (for income tax purposes), because the provisions were being rewritten generally in Part 12 of *ITA 2007*.

⁹⁰ Section 142 was amended by *FA 1988, ss 101, 103*, effective for the year 1988-89 and subsequent years of assessment.

⁹¹ The whole of the *CGTA 1979* was repealed by the *TCGA 1992*, subject to various savings set out in Sch 11. The *TCGA 1992* had effect in relation to tax for the year 1992-93 and subsequent years of assessment, and its purpose was to reconsolidate the law relating to capital gains tax.

131. *FA 1989, s 91(3)* provided that section 91 as a whole was to apply where trustees of a premiums fund trust made a transfer after the date specified by regulations or, in default, 6 April 1988 (as provided for by *ICTA 1988, s 129(6)*).

132. On the basis that section 91(1) is now recommended for repeal, and section 91(2) has already been repealed, *section 91(3)* can also be repealed as a consequential repeal.⁹²

133. *FA 1989, s 92* dealt with the making of regulations about underwriters. *ICTA 1988, s 451*, as originally enacted, had empowered the Board of Inland Revenue to make regulations for, amongst other things, the assessment and collection of tax arising from underwriting business, and the Treasury to modify by regulation provisions relating to Lloyd's underwriting agents. Savings were made for certain existing regulations.

134. Section 451 was first amended by Finance Act 1988 (c.39) ("*FA 1988*"), s 61(1)(b), (c), which substituted two new paragraphs in section 451(1) and inserted a new subsection (1A), with effect from the year 1988-89 and subsequent years of assessment. These changes allowed the Board to effect amendments to *ICTA 1988 Schedule 19A*⁹³ necessary upon changes in rules or practice at Lloyd's.

135. Section 92(1), (2) of *FA 1989* made further amendments to section 451, by substituting words in section 451(1A) relating to years of assessment, and by adding a new subsection (1B) restricting the temporal scope of regulations.

136. Sections 450 to 457 of *ICTA 1988* were repealed by *FA 1993, s 213 and Sch 23 Pt 3(12) and n5*, with effect from 1992-93 and onwards. However, although section 451 had been repealed, the amending provisions in *FA 1988, s 61(1)(b),(c)* and in *FA 1989, s 92(1), (2)* were not.

137. It is recommended above that *FA 1988, s 61(1)* should be repealed.⁹⁴ It is now recommended that *FA 1989, s 92(1), (2)* should also be repealed.

⁹² On this basis section 91 as a whole can now be repealed.

⁹³ Inserted into *ICTA 1988* by *FA 1988, s 58 and Sch 5*: see above.

⁹⁴ See above in the section of this note which deals with the Finance Act 1988: (b) Underwriters.

138. The Finance Act 1989, s 96(1) amended (by partial substitution) section 452(8) of ICTA 1988, which section dealt with “special reserve funds” vested in trustees in relation to individual underwriters. In essence, underwriters were permitted to pay a proportion of their annual business profits into special reserve funds, and sections 452 to 457 set out the income tax arrangements and consequences which would flow.

139. ICTA 1988, s 452(8) defined “profit” for the purposes of computation under Schedule D case I. The definition embraced “income arising from the investments forming part of” an underwriter’s premiums trust fund, his special reserve funds, and any other fund authorised under Lloyd’s rules. At the end of subsection 452(8) the Act separately defined “income” in this context.

140. *FA 1989, s 96(1)* amended section 452 by substituting within subsection (8) a longer definition of “income”.

141. ICTA 1988, s 452 was repealed by FA 1993, s 213 and Sch 23 Pt 3(12) and n5, with effect from 1992-93 and onwards.⁹⁵ However, neither FA 1993 nor later legislation repealed the amending provision in FA 1989, s 96(1). The partial repeal of section 96 by TCGA 1992, s 290 and Sch 12,⁹⁶ and by ITA 2007, s 1031 and Sch 3 Pt 1⁹⁷ did not cover subsection (1). Accordingly, *FA 1989, s 96(1)* should now be repealed as having been superseded.

142. *FA 1989, s 96(4)* applied parts of section 96(1) and of section 96(2) for certain transactions occurring on or after 14 March 1989. Given that section 96(1) is now recommended for repeal (above), and section 96(2) has already been repealed, *section 96(4)* should also now be repealed.

(b) Loss relief

143. *FA 1989, s 114* amended ICTA 1988, s 401(1), a provision which gave tax relief for pre-trading expenditure. Section 114 of FA 1989 extended the pre-trading relief period from 3 years to 5 years, by amending section 401(1), with effect from April 1989 onwards.

⁹⁵ The repeal of section 452 was part of a repeal of the whole portion on underwriters (in sections 450 to 457 inclusive).

⁹⁶ Repealing FA 1989, s 96(3) (which had amended Capital Gains Tax Act 1979 (c.14), s 132A).

⁹⁷ Repealing FA 1989, s 96(2) (which had amended ICTA 1988, s 687) and the cross-reference words in s 96(4).

144. The reference in ICTA 1988, s 401(1)(a) to 5 years was subsequently amended to 7 years by FA 1993, s 109(1), (4), for persons carrying on business from April 1993 onwards. However, when the second amendment was made, the first amendment by FA 1989, s 114 was not repealed by the FA 1993, although it had been superseded. Accordingly, section 114 should now be repealed.

(c) Taxes management: collection and recovery certification evidence

145. *FA 1989, s 160(3)* amended the Taxes Management Act 1970 (c.9) (“TMA 1970”), s 70 relating to sufficiency of evidence of certification of interest payable on overdue tax. The amendment substituted a new subsection (3) in section 70 to the effect that a certificate would be evidence of interest chargeable and of non-payment “unless the contrary is proved”.

146. Section 70(3) of TMA 1970 was disapplied by FA 1994, s 196 and Sch 19 Pt 1 para 21(2), which stated that subsection (3) of section 70 “shall cease to have effect” (although no formal repeal as such appeared in FA 1994, s 258 and Sch 26 (the repeals schedule)). Notwithstanding the disapplication of section 70(3) no provision was made for repeal of the amending *FA 1989, s 160(3)*. On that basis, the superseded *section 160(3) of FA 1989* should now be repealed.

(d) Taxes management: failure to make return

147. *FA 1989, s 162* amended TMA 1970, s 93, which provision related to failure to make a tax return and liability to penalty. Four subsections of section 93 were substituted in whole or in part. In essence, the section provided for daily penalties for continuing default and for an additional penalty if failure to comply with a notice to make a return were to continue after the year of assessment. This change applied to any failure to comply with a notice served in the tax year 1989-90 or later.

148. Subsequent to 1989-90 section 93 was substituted in full by the Finance Act 1994 (c.9) (“FA 1994”), ss 196, 199(1), (2)(a) and Sch 19 Pt 1 para 25 with effect (for income and capital gains tax) from the year 1996-97 and subsequent years of assessment. The substituted section varied the penalty provisions relating to failure to make a return in response to a formal notice to deliver.

149. Although section 93 was substituted by the FA 1994, no provision was made for repeal of the original version of that section as amended by the FA 1989. FA 1989, s 187 and Sch 17 did not repeal the superseded parts of TMA 1970, s 93, and FA 1994,

s 258 and Sch 26 did not repeal the superseded FA 1989, s 162. Accordingly, *section 162 of FA 1989* should now be repealed.

Finance Act 1991

(a) Higher rate tax relief on mortgage loans

150. The *Finance Act 1991 (c.31) ("FA 1991")*, s 27 dealt with the abolition of higher rate relief on interest payments for certain mortgages and other forms of loan. Section 27(6) gave effect to *Schedule 6* to the Act (effective for the year 1991-92 and subsequent years of assessment) which set out amendments to ICTA 1988 and FA 1988. Those amendments affected existing provisions on the taxation of beneficial loan arrangements (ICTA 1988, ss 160, 167 and Sch 7) and on applicable rates of capital gains tax (FA 1988, s 102).

151. ICTA 1988, Sch 7 was amended by FA 1991, Sch 6 as follows:

- Paragraph 3 (on calculation of the cash equivalent of a loan benefit) had words added to it, and two sub-paragraphs deleted [by Sch 6 para 3]
- Paragraph 6 (on eligibility for relief of interest) was omitted because of the insertion of amending provisions which then superseded it [by Sch 6 para 4]
- Paragraphs 13 to 19 (on restriction of relief to basic rate tax only) were added to provide the revised mechanism for the calculation of interest eligible for relief on employees' home loans [by Sch 6 para 5].

152. ICTA 1988, ss 160, 167 and Sch 7 were subsequently repealed by the Income Tax (Earnings and Pensions) Act 2003 (c.1) ("ITEPA 2003"), ss 722, 723, 724(1), Sch 6 paras 1, 24 and 111 (omitting ICTA 1988, ss 160 to 168G and Schs 7 and 7A) and Sch 8 Pt 1 (repealing ICTA 1988, ss 160 to 168G and Schs 7 and 7A) with effect from the tax year 2003-04 onwards (for income tax) and for accounting periods ending after 5 April 2003 (for corporation tax).

153. However, although ITEPA 2003, Sch 8 Pt 1 repealed FA 1991, Sch 6 paras 1 and 3, neither ITEPA 2003 nor other legislation sought to repeal the amending provisions in FA 1991, s 27(6) and Sch 6 para 4, which had also been superseded. The Taxation of Chargeable Gains Act 1992 (c.12) ("TCGA 1992"), s 290 and Sch 12 had previously repealed FA 1991, Sch 6 para 6, but not section 27(6) nor any other portion of Schedule 6. Likewise, the Finance Act 1994 (c.9) ("FA 1994"), ss 81(6), 88(5), (6), 258 and Sch 26 Pt 5(2), (5) and note, had repealed FA 1991, s 27(1) to (5) and (7) -

but not subsection (6) - and Sch 6 paras 2 and 5 - but not paragraph 4 - broadly from 1994-95 onwards.

154. On that basis, *Schedule 6 paragraph 4 of FA 1991* should now also be repealed as being spent. As a consequence of that repeal, which completes the repeal of Schedule 6, the need for *section 27(6)* is superseded, and that subsection should likewise be repealed.

(b) Foreign earnings: workers in Kuwait

155. Iraq invaded Kuwait in August 1990, leading to Anglo-American intervention. *FA 1991, s 46* set out special provisions relating to the taxation of persons who, prior to the invasion, were working in Kuwait or Iraq and subsequently returned to the UK, and whose absence from the UK would ordinarily have been treated (for taxation purposes) as “a qualifying period consisting of at least 365 days”.

156. The tax regime for foreign earnings and travel expenses was set out in ICTA 1988, s 193 and Sch 12. The rules in section 193(1) allowed a person performing the duties of an office or employment outside the UK to deduct from his income earnings attributable to that period. The work had to be performed in a “qualifying period” which lasted at least 365 days and which fell wholly or partly in the year of assessment. By Schedule 12 paragraph 3, in ascertaining a “qualifying period”, intervening periods where a person was not working abroad, amounting to not more than 62 days, could be ignored (with a figure of 90 days for seafarers).⁹⁸

157. *FA 1991, s 46* provided a dispensation for workers obliged to leave the Gulf through the outbreak of hostilities - which waged from 2 August 1990 to 28 February 1991 - so long as they had spent 62 days before the commencement date (or 183 days in the case of a seafarer) in Iraq or Kuwait.

158. The benefit of this tax provision would have expired by the end of the tax year 1992-93, and today it is spent. Moreover, section 193(1) of, and Schedule 12 paragraph 3(2A) to, ICTA 1988 were repealed by Finance Act 1998 (c.36) (“FA 1998”), ss 63, 165 and Sch 27 Pt 3(11) with effect for emoluments attributable to qualifying periods beginning on or after 17 March 1998 (budget day), or before 17 March 1998 but received on or after that date. And section 193 and Schedule 12 as a whole were

⁹⁸ The figure of 90 days set out in Schedule 12 paragraph 3(2A) was replaced by 183 days for the tax year 1991-92 and later years of assessment: see *FA 1991, s 45*.

repealed by the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”), s 724 and Sch 8 Pt 1 with effect from the tax year 2003-04 onwards (for income tax purposes), and for accounting periods ending after 5 April 2003 (for corporation tax).

159. On this basis *FA 1991, s 46* (which is, in part, an amending provision) can now be repealed.

(c) Advance corporation tax: oil industry

160. *FA 1991, s 66* related to taxation of the oil industry and, more particularly, restriction on the setting-off of advance corporation tax (“ACT”) against liability to corporation tax on profits arising from oil extraction activities. Section 66 amended ICTA 1988, s 497.

161. Section 497 of ICTA 1988 varied the rules for set-off of ACT (set out in ICTA 1988, s 239) so that, for example, where a company makes a distribution to an associated UK company (being a dividend on redeemable preference shares), and ACT is paid on that distribution, the ACT cannot be set against any liability of the distributing company for corporation tax due on any of its “ring fence income” (as defined). Specific arrangements were made in the section for the circumstance where the proceeds of the redeemable preference shares dividend were used to meet expenditure incurred by the issuing company in oil extraction activities or the acquiring of oil rights. This had the effect (according to the section’s sidenote) of restricting the setting-off of ACT against income from oil extraction activities and the like.

162. The amendment by section 66 of *FA 1991* involved the insertion of words into subsection (2) of ICTA 1988, s 497, and insertion of new subsections (2A) and (2B), so that a distribution which was made under what was termed a “substitution scheme” (as defined) would also fall within the section’s rubric. This amendment was to apply to distributions made on or after 2 May 1991.

163. Section 497 (along with sections 498 and 499, all on ACT) of ICTA 1988 was subsequently repealed in whole by the Finance Act 1998 (c.36) (“*FA 1998*”), ss 31(5), 165 and Sch 3 para 29 and Sch 27 Pt 3(2) in relation to accounting periods from 6 April 1999 onwards. Schedule 3 paragraph 29 provided that section 497 should “cease to have effect” and Schedule 27 provided for the formal repeal of the section, subject to Schedule 3.

164. However, the amending provision in *FA 1991, s 66* was not repealed by the *FA 1998* or any later legislation. Its purpose is now spent and, on that basis, it warrants repeal.

(d) Building societies and deposit-takers: audit powers

165. *FA 1991, s 75* related to audit powers by the Board of Inland Revenue in relation to persons “not ordinarily resident” in the UK. The section amended *ICTA 1988* by inserting a new section 482A into that Act.

166. Section 482A empowered the Board to make regulations excluding certain approved building societies and deposit-takers from particular audit powers when handling non-residents’ investments. Section 482A(2) set out the specific matters the regulations could cover in the approval process.

167. Section 482A was subsequently repealed by the *Finance Act 2000 (c.17)* (“*FA 2000*”), ss 145(10), (11), 156 and Sch 40 Pt 5 and note. These provisions ceased the effect of section 482A in relation to amounts paid, credited or received on or after 6 April 2001, and formally repealed the provision from the same date.

168. However, the amending provision in *section 75 of FA 1991* was not repealed by the *FA 2000*, or by any other legislation. The provision is now spent and can be repealed.

Finance (No. 2) Act 1992

(a) Transfers of UK and non-UK trades: chargeable gains

169. The *Finance (No. 2) Act 1992 (c.48)* (“*F (No. 2) A 1992*”), ss 47 to 49 dealt with transfers of UK and non-UK trades in the context of taxation of chargeable gains, subject to repeals already enacted by the *Taxation of Chargeable Gains Act 1992 (c.12)* (“*TCGA 1992*”).⁹⁹ The sections made various amendments to existing provisions in *ICTA 1970*, as follows:

- *section 47* inserted a new section 269A into *ICTA 1970* which was to apply when a “qualifying company” resident in one European member state transferred the whole or part of a trade carried on in the UK to another “qualifying company” resident in another member state, wholly in exchange for securities (thus securing a corporation tax relief); and inserted a new

⁹⁹ The repeals were set out in *TCGA 1992, s 290* and Sch 12. By section 289 the repeals took effect in relation to the tax year 1992-93 and subsequent years of assessment, *ie* from and after 6 April 1992.

section 269B which provided that the tax relief would not be available where the transfer was effected as part of a tax avoidance scheme rather than for *bona fide* commercial reasons.

- *section 48* inserted a new section 269C into ICTA 1970 which was to apply where a “qualifying company” resident in the UK transferred whole or part of a trade carried on in a member state (not within the UK) to a “qualifying company” resident in a member state (other than the UK), wholly or partly in exchange for securities (and gave rise to a reduced tax liability); and inserted a new section 269D which likewise disapplied the relief in circumstances where the scheme or arrangement was designed to avoid tax liability.
- *section 49* made a series of consequential amendments to ICTA 1970 and the Finance Acts 1984, 1985 and 1988.

These provisions were to operate in relation to transfers taking effect on or after 1 January 1992¹⁰⁰ - in other words, retrospectively¹⁰¹ - but before the coming into force of the TCGA 1992 on 6 April 1992.¹⁰² They were enacted so as to implement the EC Mergers Directive which had been adopted by the Council of Ministers in July 1990 and which came into effect on 1 January 1992.

170. *Sections 47 to 49* mirrored sections 44 to 46 of F (No. 2) A 1992 which amended (in similar manner) the TCGA 1992 by inserting into that Act new sections 140A-140D, effective from 6 April 1992.¹⁰³

171. The inserted sections 269A-269D of ICTA 1970 were repealed by TCGA 1992, s 290 and Sch 12 (which provision repealed the whole of ICTA 1970, subject to certain savings which are not pertinent here).

172. *Section 49* of F (No. 2) A 1992 had made consequential amendments to sections 268A, 275 and 281 of ICTA 1970. Those provisions in ICTA 1970 are also now repealed.

¹⁰⁰ See F (No. 2) A 1992, ss 47 (preamble), 48 (preamble) and 49(9)-(11).

¹⁰¹ The F (No. 2) A 1992 did not obtain royal assent until 16 July 1992. As a consequence, the principal Act governing corporation tax on chargeable gains for the period 1 January to 5 April 1992 was ICTA 1970, and for the period 6 April 1992 onwards the principal Act was TCGA 1992.

¹⁰² See TCGA 1992, s 289.

¹⁰³ The preambles to F (No. 2) A 1992, ss 44, 45 and s 46(1) expressly stated that the amendments to the TCGA 1992 were to “have effect, and be deemed always to have had effect” within that Act, that is to say, that they would take effect from the time the TCGA 1992 took effect.

173. *Section 49* had also made consequential amendments to:

- Finance Act 1984 (c.43), Sch 13 para 10(2) (since repealed by TCGA 1992, s 290 and Sch 12)
- Finance Act 1985 (c.54), s 68(7A)(b) (since repealed by TCGA 1992, as above)
- Finance Act 1988 (c.39), Sch 8 para 1(3)(b) and Sch 11 para 5 (both Schedules since repealed by TCGA 1992, as above).

Given the repeals, the consequential amendments are now spent.

174. However, neither TCGA 1992 nor other legislation repealed any of the amending provisions in *sections 47 to 49* of F (No. 2) Act 1992. Because those provisions are now all spent they may be expressly repealed.

175. *Section 50* of F (No. 2) A 1992 inserted a new section 815A into ICTA 1988 (relating to double taxation relief and, more particularly, transfer of a non-UK trade), and that new section referred to (amongst others) section 269C of ICTA 1970, which had been inserted by *section 48* of F (No. 2) A 1992. Section 815A of ICTA 1988 has, however, been repealed by the Taxation (International and Other Provisions) Act 2010 (c.8) ("TIOPA 2010"), ss 374, 378 and Sch 8 para 32 and Sch 10 Pt 1 (consequential upon the rewrite of section 815A in TIOPA 2010, s 122). Likewise, the amending *section 50* of F (No. 2) A 1992 was repealed by TIOPA 2010, Sch 10. In this instance, therefore, no further repeal is required.

(b) Foreign dividends: paying and collecting agents

176. *F (No. 2) A 1992, s 63 and Sch 11* made provision for the payment of income tax on foreign dividends and, more particularly, the arrangements for assessment and payment of income tax in respect of paying and collecting agents. *Schedule 11* amended various provisions in TMA 1970, ICTA 1988 and FA 1989, with effect in relation to transactions effected on or after 1 October 1992.

177. *Schedule 11 paragraphs 1, 2* to F (No. 2) A 1992 amended ICTA 1988, s 123 and Sch 3. Section 123 of ICTA 1988 was subsequently repealed by Finance Act 1996 (c.8) ("FA 1996"), ss 79(2), 205, Sch 7 paras 1, 13, 32 and Sch 41 Pt 5(2) with effect for the purposes of income tax for the year 1996-97 and subsequent years of assessment, and for corporation tax for accounting periods ending after 31 March 1996 (consequential upon the abolition of the charge to tax under Schedule C). Likewise,

Schedule 3 was repealed by FA 1996, Sch 7 para 27 and Sch 41 Pt 5(2), subject to a time-limited saving in Schedule 6 paragraph 25. The amending *Schedule 11 paragraphs 1, 2* were repealed by FA 1996, Sch 41 Pt 5(2).

178. *Schedule 11 paragraphs 3 and 4* amended TMA 1970, ss 86(4) Table, 98 Table. *Paragraph 3* simply omitted words from paragraph 2 of the Table in section 86(4). It is thus already spent and can be repealed.

179. *Paragraph 4* amended the Table in section 98 by substitution of words (“Schedule 3, paragraph 6C”). Subsequently the substituted words were repealed by FA 1996, Sch 7 para 29 and Sch 41 Pt 5(2), with effect for the year 1996-97 and subsequent assessment years (for income tax) and for accounting periods ending after 31 March 1996 (for corporation tax). The amending provision was repealed by FA 1996, Sch 41 Pt 5(2).

180. *Schedule 11 paragraph 5* amended FA 1989, s 178(2)(m) by a textual insertion. The inserted words were later omitted and repealed by FA 1996 Sch 7 para 30 and Sch 41 Pt 5(2), and the amending provision itself was repealed by Schedule 41 Pt 5(2), with effect for the year 1996-97 onwards, and for accounting periods ending after 31 March 1996.

181. *Schedule 11 paragraph 6* gave effect to the earlier provisions in the Schedule for transactions effected on or after 1 October 1992. If *Schedule 11 paragraph 3* is now formally repealed, so too can *paragraph 6* be repealed, and *section 63* also becomes otiose.

Finance Act 1993

(a) Charitable donations

182. The Finance Act 1993 (c.34) (“FA 1993”), ss 67 to 69 dealt with charitable donations. *Section 67* dealt, in particular, with donations to charities from companies and individuals, and effected amendments to ICTA 1988, s 339 and FA 1990, s 25, substituting in each provision a revised financial threshold (£250) for a charitable donation to be deemed a “qualifying donation” (applicable to payments or gifts made from 16 March 1993 onwards).

183. Section 339 of ICTA 1988 (relating to the taxation of income of companies) provided, amongst other things, that a “qualifying donation” to a charity would not

constitute a charge to tax on the company's income where the company was UK resident and not a "close company". On making the payment the donor company was obliged (for it to qualify) to deduct from the donation the amount of income tax due on it.

184. Section 339 had been amended by Finance Act 1990 (c.29) ("FA 1990"), s 26(4) which inserted into the section new subsections (3A) to (3G), effective in relation to payments made on or after 1 October 1990. Section 26(3) omitted reference to a "close company" from the original section 339(2). The new subsection (3A) provided that a payment made by a close company (which was now capable of making a qualifying donation) would only be treated as such if it left not less than £600 after the deduction of income tax.

185. The Finance (No. 2) Act 1992 (c.48) ("F (No. 2) A 1992"), s 26(1), (3) substituted in section 339(3A) the figure of £400 for that of £600 for payments made on or after 7 May 1992.

186. *Section 67(1), (3)* of FA 1993 made a further amendment to section 339(3A) of ICTA 1988 by substituting the figure of £250 for £400. FA 1993, s 213 and Sch 23 Pt 3(2) then repealed the amending F (No. 2) A 1992, s 26 for payments made on or after 16 March 1993.

187. The Finance Act 2000 (c.17) ("FA 2000"), ss 40(1), (3), (11), 156 and Sch 40 Pt 2(1) and n2 repealed section 339(3A) of ICTA 1988, but did not repeal the amending provisions in FA 1990, s 26(4)¹⁰⁴ or FA 1993, s 67(1), (3). FA 1990, s 26 was, however, later repealed in whole by Corporation Tax Act 2010 (c.4) ("CTA 2010"), s 1181 and Sch 3 Pt 1. FA 1993, s 67(1) was likewise repealed by the CTA 2010, s 1181 and Sch 3 Pt 1. FA 1993, s 67(3) remains unrepealed.

188. *Section 67* of FA 1993 also amended section 25 of FA 1990. That provision dealt with donations to charity by individuals and the circumstances in which such donations were to be treated as "qualifying", thus enabling the charity to reclaim tax deducted. By section 25(2)(g) the gift to the charity had to be a sum of not less than £600.

¹⁰⁴ Blanket repeal of FA 1990, s 26(4) would have been impractical because other parts of ICTA 1988, s 339(3B)-(3G) then needed to survive.

189. The figure in FA 1990, s 25(2)(g) was first amended by substitution by F (No. 2) A 1992, s 26(2) to read £400, with effect for gifts made on or after 7 May 1992.

190. *Section 67(2), (4)* of FA 1993 then adjusted the figure in section 25(2)(g) from £400 to £250, with effect for gifts made on and from 16 March 1993.

191. FA 1990, s 25(2)(g) was repealed by FA 2000, ss 39(1),(3)(a),(10), 156 and Sch 40 Pt 2(1) and n4 for gifts made on or after 6 April 2000. The whole of section 25(2) was later repealed by the Income Tax Act 2007 (c.3) ("ITA 2007"), s 1027 and Sch 1 para 284(1),(2) (subsection (2) of section 25 omitted) and s 1031 and Sch 3 Pt 1 (subsection (2) repealed).

192. The amending F (No. 2) A 1992, s 26 was repealed by FA 1993, ss 67, 213 and Sch 23 Pt 3(2) and n2 for gifts made on or after 16 March 1993.

193. The amending FA 1993, *section 67(2), (4)* was not repealed by the ITA 2007 or any other legislation.

194. *Section 67(2) to (4) of FA 1993* is now spent, and *section 67* as a whole can thus be repealed.

(b) Payments under discretionary trusts: liability of trustees

195. *Section 79(2)* of FA 1993 contained provisions supplemental to sections 77 and 78 on taxation of company distributions. *Section 79(2)* (read with Schedule 6 to the Act) amended ICTA 1988, s 687(3).

196. Section 687 of ICTA 1988 provided that where trustees, in any year of assessment, make a payment to a person under a discretionary trust, and that payment is income in the hands of the recipient, then the payment will be treated as a payment net of income tax deducted at basic rate (for which sum the trustees will be assessable). Section 687(3) originally recited seven different amounts of tax (described in paragraphs (a) to (g)) which were to be set against the amount assessable on the trustees. To these paragraphs were later added two more, (h) and (i).

197. *Section 79(2)* of FA 1993 provided that ICTA 1988, s 687(3) was to be “deemed always to have had effect” as if the repeal of paragraph (b) of subsection (3)¹⁰⁵ (relating to the amount of tax at the additional rate on any sum treated as income of the trustees) had been confined simply to certain words in that paragraph, thus reinstating the paragraph, albeit with amendment.¹⁰⁶

198. Secondly, *section 79(2)* inserted a new paragraph (j) into section 687(3).¹⁰⁷ That paragraph provided a further “amount of any tax” (on an amount treated as income) which was to be set against the amount assessable on the trustees.¹⁰⁸

199. Section 687 of ICTA 1988 was repealed by the Income Tax Act 2007 (c.3) (“ITA 2007”), s 1031 and Sch 3 Pt 1, effective for the tax year 2007-08 and subsequently (for income tax), and for accounting periods ending after 5 April 2007 (for corporation tax). By section 1027 and Schedule 1 paragraphs 1 and 145, sections 685A to 687 of ICTA (liability of trustees) were omitted.

200. Likewise, of the amending provisions, *section 79(2)(b)* of FA 1993 (and the conjoining word “and”) was also repealed by ITA 2007, s 1031 and Sch 3 Pt 1 (although not omitted by Sch 1).

201. Given the repeal of section 687 of ICTA 1988, the whole of *section 79(2) of FA 1993* is now spent, and can be repealed.

(c) Indexation of allowances

202. *Section 107* of FA 1993 made amendments to various sections in ICTA 1988 (relating to indexation of allowances and other matters for 1994-95 onwards). *Section 107(2)(b)* omitted subsection (5) from ICTA 1988, s 1 for the year 1994-95 and subsequently. The same provision was formally repealed by section 213 and Schedule 23 Part 3(10), in accordance with section 107.

203. The whole of section 1 of ICTA 1988 was repealed by ITA 2007, ss 1027, 1031 and Sch 1 paras 1, 2 and Sch 3 Pt 1.

¹⁰⁵ The repeal had been made by the Finance Act 1989 (c.26), s 187 and Sch 17 Pt 5 (close companies) for accounting periods after 31 March 1989.

¹⁰⁶ See paragraph (a) within *section 79(2)*.

¹⁰⁷ See paragraph (b) within *section 79(2)*.

¹⁰⁸ This amount was defined by reference to the Finance Act 1990 (c.29), Sch 10 paras 12, 19.

204. On this basis, *section 107(2)(b)* of FA 1993 is spent and may now be repealed. Likewise, *section 107(2)(a)* - which amended subsection (4) in section 1 of ICTA 1988 for the year 1994-95 and subsequent years - is also spent and can be repealed.

(d) Lloyd's underwriters

205. Sections 171 to 184 of FA 1993¹⁰⁹ dealt with taxation of profits and other matters relating to underwriting businesses conducted by members of Lloyd's. *Section 182(1)* provided powers to the Board of Inland Revenue to make regulations for the assessment and collection of tax, for making necessary changes to Chapter 3, for modifying the provisions where (for example) an underwriting business ceases, and for giving foreign tax credit. *Section 182(1)* was amended by insertion of a *paragraph (ca)* by the Finance Act 1995 (c.4) ("FA 1995"), s 83(2) (which allowed for modification of the Chapter's application in the context of premiums trust funds),¹¹⁰ and that paragraph was subsequently amended by -

- the Finance Act 1997 (c.16), ss 76, 113 and Sch 10 paras 6(a), 7(1) and Sch 18 Pt 6(10), which repealed sub-paragraph (i) in paragraph (ca), but left in place *sub-paragraph (ii)*
- the Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (SI 2001 No. 3629), arts 75, 82(d), which substituted "premium" for "premiums".

206. *Section 182(1)(ca)(ii)* was amended by the Income Tax Act 2007 (c.3) ("ITA 2007"), s 1027 and Sch 1 para 359, which substituted references to sections on "repos" and redemption arrangements in ITA 2007 for references to section 737E of ICTA 1988.

207. HMRC believe that *section 182(1)(ca)(ii)* is no longer required because the regulation-making power conferred on what was then the Board of Inland Revenue has never been exercised since 1993 and will not be needed in the future. As a consequence of the repeal of what will be the whole of *section 182(1)(ca)*, the amending provision in *ITA 2007, Sch 1 para 359* can also be repealed.

208. HMRC will review whether, in a future Statute Law (Repeals) Bill, the amending FA 1995, s 83(2) could also safely be repealed.

¹⁰⁹ These sections comprised Part 2 Chapter 3 of FA 1993. Chapter 3 also includes Schedules 19 and 20 to the Act.

¹¹⁰ The same insertion was made in section 229 of the Finance Act 1994 (c.9).

(e) Taxation of company distributions

209. Section 79(1) of FA 1993 (relating to the taxation of distributions) gave effect to a raft of supplemental provisions in *Schedule 6* to the Act. *Schedule 6 paragraph 10* provided for an amendment, by substitution, within 694(2A) of ICTA 1988. Section 694(2A) had been inserted into ICTA 1988 by the Finance Act 1988 (c.39), s 24(3).

210. Section 694 of ICTA 1988 was repealed by ITA 2007, ss 1027, 1031 and Sch 1 paras 1, 149 (omitting sections 690 to 694) and Sch 3 (repealing the same sections), with effect (for income tax purposes) from the tax year 2007-08 onwards. However, the amending provision in *FA 1993 Sch 6 para 10* was not repealed. As that provision is now spent it should be repealed.

Finance Act 1994

(a) Distributing funds: UK equivalent profits

211. The Finance Act 1994 (c.9) (“FA 1994”), s 176 made minor and consequential amendments to ICTA 1988. *Section 176(2)* substituted paragraph 5(2A) in Schedule 27 to ICTA 1988 (which schedule dealt with offshore distributing funds). The original paragraph 5(2A) had been inserted by the Finance Act 1993 (c.34), s 170 and Sch 18 para 6. The new paragraph 5(2A) provided that:

“In applying sub-paragraph (1) [of paragraph 5] above the effect of the following shall be ignored, namely -

- (a) sections 125 to 133 of the Finance Act 1993 (exchange gains and losses), and
- (b) sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994 (treatment of profits and losses on interest rate and currency contracts).”

212. ICTA 1988, Sch 27 para 5(2A) was partially repealed by the Finance Act 2002 (c.23) (“FA 2002”), s 141 and Sch 40 Pt 3(10) n1, 3(13) n1, with effect for account periods beginning on or after 1 October 2002, so far as it related “to sections 125 to 133 of the Finance Act 1993” and to “sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994”. These recitals coincided with amendment made by *section 176(2)*.

213. However, neither the original amendment made by *Schedule 18 paragraph 6 to FA 1993* nor the second amendment made by *section 176(2) of FA 1994* were repealed. As each provision is now superseded they can both be repealed.

(b) Distributions of authorised unit trusts

214. Section 112 of, and *Schedule 14 paragraph 2* to, FA 1994 inserted eleven new sections into ICTA 1988, to take effect in relation to distribution periods from 1 April 1994 onwards. The sections were sections 468H to 468R, inserted immediately after section 468G and before section 469 (relating to distributions of authorised unit trusts). *Schedule 14 paragraph 4* provided that sections 468F and 468G were to cease to have effect (and they were formally repealed by Schedule 26 Pt 5(13)).

215. ICTA 1988, ss 468H to 468R were later repealed by stages:

- sections 468H to 468Q were repealed by the Finance (No. 2) Act 2005 (c.22) (“F (No. 2) A 2005”), ss 17(1)(a), 19(1), 70 and Sch 11 Pt 2(3) with effect from 2006-07 in relation to income tax and, for corporation tax, for accounting periods beginning on or after 1 April 2006¹¹¹
- section 468R was repealed by the Finance (No. 2) Act 1997 (c.58) (“F (No. 2) A 1997”), ss 36(4), 52 and Sch 6 para 8(7), (9) and Sch 8 Pt 2(11), for distributions on or after 6 April 1999.

216. However, neither the amending provision in *Schedule 14 paragraph 2* to FA 1994 nor *Schedule 14 paragraph 4* to that Act have been repealed to date. As the former is superseded, and the latter is spent, each may now be repealed.

(c) Foreign income dividends

217. Section 138 of, and *Schedule 16 paragraph 5* to, FA 1994, taken as a whole, amended section 434 of ICTA 1988. Section 434 related (in the main) to franked investment income of companies carrying on life assurance business.

218. *Schedule 16 paragraph 5(1)* simply provided that Schedule 16 paragraph 5(2)-(5) should amend section 434 by various insertions in the text. Since enactment of the amendments two sets of repeals have undermined the purpose of *paragraph 5(1)*:

- paragraph 5(2), (3) has been repealed by Finance Act 1995 (c.4) (“FA 1995”), s 162 and Sch 29 Pt 8(5) and n2, taking effect for accounting periods beginning on or after 1 January 1995¹¹²
- paragraph 5(4), (5) has been repealed by Finance (No. 2) Act 1997 (c.58), s 52 and Sch 8 Pt 2(11) and note,

¹¹¹ Various of these sections had already been repealed in part prior to 2005, eg by the Finance (No. 2) Act 1997 (c.58).

¹¹² See FA 1995, Sch 8 para 57.

leaving *paragraph 5(1)* as spent.

219. On that basis *Schedule 16 paragraph 5(1) to FA 1994* can now be repealed.

(d) Taxation of non-residents: minor correction

220. Section 146 of, and Schedule 17 to, FA 1994 corrected various mistakes originally made in ICTA 1988. *Schedule 17 paragraph 1* related to ICTA 1988, s 43, pertaining to taxation of non-residents (and itself related to section 78 of the Taxes Management Act 1970 (c.9)), and provided that section 43(1) was to have effect, “and be deemed always to have had effect”, as if the words “or IV” (of Schedule D) were omitted from its text.

221. Section 43 of ICTA 1988 was repealed by FA 1995, ss 40(3), 162 and Sch 29 Pt 8(16), with effect from 6 April 1996. However, the amending provision in *Schedule 17 paragraph 1 to FA 1994* was not repealed. It should now be.

(e) Taxes management: amendments

222. Section 196 of, and Schedule 19 to, FA 1994 made various amendments to, principally, the Taxes Management Act 1970 (c.9) (“TMA 1970”) and ICTA 1988. *Schedule 19 paragraph 38* provided that certain words in section 203(2)(dd) of ICTA 1988, relating to Schedule D and PAYE, were to “cease to have effect”, and the repeal of the words was effected by FA 1994, s 258 and Sch 26 Pt 5(23), operative from 1996-97 onwards.

223. *Schedule 19 paragraph 38* to FA 1994 is now spent and can be repealed.

224. *Schedule 19 paragraphs 39 and 40* adjusted the statutory time limits for claims under ICTA 1988, ss 534 and 537A (relating to relief for copyright and design payments).¹¹³ These provisions were both repealed after 1994 by the Finance Act 2001 (c.9) (“FA 2001”), ss 71(3), 110 and Sch 33 Pt 2(6) and note, for payments actually receivable on or after 6 April 2001.

225. However, the amending provisions in *Schedule 19 paragraphs 39 and 40 to FA 1994* remain unrepealed although they are spent. On that basis they can now be repealed.

¹¹³ ICTA 1988, s 537A was inserted by the Copyright, Designs and Patents Act 1988, s 303(1) and Sch 7 para 36(1),(6).

Finance Act 1995

(a) Abolition of interest relief for commercially let property

226. The Finance Act 1995 (c.4) ("FA 1995"), s 39 introduced a new income tax regime for UK property income whereby, amongst other things, the rules for calculating trading income were to be used in calculating the profits and losses of a UK property business.¹¹⁴ In consequence, FA 1995, s 42 (dealing with abolition of interest relief for commercially let property) repealed one provision in ICTA 1988 and amended several others.

227. *Section 42(1)* (together with section 162 and Sch 29 Pt 8(2)) repealed ICTA 1988, s 355(1)(b) (exclusions of relief for interest payments on loans). *Section 42(1)*, having become spent, was repealed by the Finance Act 1999 (c.16) ("FA 1999"), s 139 and Sch 20 Pt 3(7).

228. *Section 42(2)(a)* amended, by substitution, words in ICTA 1988, s 353(1B). Section 353(1B) has since been repealed by Income Tax Act 2007 (c.3) ("ITA 2007"), s 1031 and Sch 3 Pt 1, as has the amending provision in FA 1995, s 42(2)(a).

229. *Section 42(2)(b) to (e)* amended, by substitution, portions of ICTA 1988, ss 355, 356(1), 356B(5), 357A(7), 357B(1), (6), and 357C(1), (2) in relation to payments of interest made (broadly) on or after 6 April 1995.

230. Sections 354 to 358 (including sections 355 to 357C) of ICTA 1988 were repealed by FA 1999, ss 38(8), 139 and Sch 4 paras 2, 18(5) and Sch 20 Pt 3(7) and n4 (which related to the withdrawal of tax relief for interest payable on loans to buy land, etc.). These repeals took effect in relation to any payment of interest made on or after 6 April 2000, and certain payments of interest made before that date. *Section 42(2)(b) to (e)* of FA 1995 was likewise repealed by FA 1999, Sch 20 Pt 3(7).

231. *Section 42(3)* gave effect to section 42 as a whole (subject to subsections (4) to (6)) in relation to any interest payment made on or after 6 April 1995. *Section 42(3)* is still operational and should remain so whilst Section 42(4) to (6) is also effective.

¹¹⁴ This tax regime is now found in Part 4 of the Income Tax (Trading and Other Income) Act 2005 (c.5) ("ITTOIA 2005"): see, in particular, section 272.

232. *Section 42(4)* provided that the section was not to apply to any interest payment on a loan which was made before the time during 1995-96 when the source of income ceased, where -

- the profits on the source of income that ceased were taxed without reference to the new Schedule A (inserted into ICTA 1988 by FA 1995, s 39(1)), by virtue of FA 1995 s 39(5) or s 41(9), and
- the source of income included land, caravan or house-boat which satisfied the loan condition specified in ICTA 1988, s 355(1)(b).

233. Since enactment of *section 42(4)* the statutory provisions mentioned in it have been repealed. FA 1995, ss 39 and 41 were repealed by Finance Act 1998 (c.36) ("FA 1998"), s 165 and Sch 27 Pt 3(4) and note, with effect from 1998-99 and subsequent years of assessment (for income tax) and from 1 April 1998 (or corporation tax).¹¹⁵ Similarly, ICTA 1988, s 355(1)(b) ceased to have effect as a result of *section 42(1)*, and was repealed by FA 1999 (see above). As a consequence, *section 42(4)* no longer has practical value, and should be repealed.

234. *Section 42(5)* provided (broadly) that no relief for payment of interest before 6 April 1995 was to be given against income for 1995-96 or subsequent years of assessment under ICTA 1988, s 355(4), subject to Schedule 6 paragraph 19(3) to FA 1995 (carry forward of losses). As indicated above, section 355 of ICTA 1988 was repealed by FA 1999. On that basis *section 42(5)* is deprived of meaning and has become spent. It should be repealed.

235. *Section 42(6)* provided that Schedule 7 to FA 1995 (which made consequential amendments in relation to corporation tax) was to have effect for accounting periods ending after 31 March 1995. *Section 42(6)* was repealed by the Finance Act 1996 (c.8) ("FA 1996"), s 205 and Sch 41 Pt 5(3), subject to the transitional provisions set out in section 105 and Schedule 15 (which appear now to have become spent).

236. Given the recommendation above to repeal *section 42(4)*, (5), and the fact that *section 42(6)* has already been repealed, *section 42(3)* of FA 1995 can also be repealed consequentially.

¹¹⁵ See FA 1998, s 38(2), (3). So far as corporation tax was concerned, the repeal was subject to the transitional provisions in Schedule 5 Part 4. These provisions appear now to be spent.

(b) Life insurance policies

237. *Section 57* of FA 1995 (duties of insurers to provide information in relation to life policies) amended section 552 of ICTA 1988 by inserting new subsections (2A) and (4A) to (4C) into the section,¹¹⁶ with a consequential amendment to the Taxes Management Act 1970 (c.9) (“TMA 1970”), s 98 Table (relating to penalties), substituting reference to “section 552(1) to (4)” and “regulations under section 552(4A)”.¹¹⁷

238. The Finance Act 2001 (c.9) (“FA 2001”), s 83(1), (3) and Sch 28 paras 18 and 20 effected substitutions in both ICTA 1988 and TMA 1970 in relation to chargeable events happening on or after 6 April 2002, as follows:

- Schedule 28 paragraph 18 substituted text for the existing section 552 of ICTA 1988 and inserted a new supplemental section 552ZA
- Schedule 28 paragraph 20 substituted entries in section 98 of TMA 1970, thus rendering the FA 1995 amendments obsolete.

However, neither FA 2001, s 110 and Sch 33 nor subsequent legislation repealed the amending provisions in FA 1995, *section 57* which had been superseded in whole. *Section 57* is now spent and can be repealed.

(c) Taxation of income from land (Schedule A): sale and leaseback

239. Section 39 of, and Schedule 6 to, FA 1995 effected amendments to ICTA 1988 and other tax statutes (in connection with charges under Schedule A). *Schedule 6 paragraph 27* omitted a number of words from ICTA 1988, s 779(13)(a) (which defined, in the context of sale and leaseback transactions, “deductions by way of relevant tax relief” for the purpose of anti-avoidance provisions), which words were also repealed by FA 1995, s 162 and Sch 29 Pt 8(1). The repeal took effect for the year 1995-96 and subsequently (and, for corporation tax purposes, for accounting periods ending on or after 31 March 1995).¹¹⁸

240. Although *Schedule 6 paragraph 27 to FA 1995* is spent, it has not been repealed. It should now be repealed.

¹¹⁶ See FA 1995, s 57(1), (2).

¹¹⁷ See FA 1995, s 57(3).

¹¹⁸ See FA 1995, s 39(4), (5).

(d) Settlements: liability of settlor

241. Section 74 of, and Schedule 17 to, FA 1995 dealt with settlements and estates (and the liability to tax of the settlor), and made amendments - both substantive and consequential - for the year 1995-96 and subsequent years of assessment for settlements created at any time.

242. *Schedule 17 paragraphs 24 and 26* to FA 1995 substituted reference to section 347A(7) of ICTA 1988 (as amended)¹¹⁹ (relating to annual payments) in place of reference to “section 660(3)” of ICTA 1988 (on covenanted payments to charity) in two earlier statutes -

- in Finance Act 1989 (c.26) (“FA 1989”), s 59(1)(c) (concerning covenanted subscriptions to charities)¹²⁰
- in Finance Act 1990 (c.29) (“FA 1990”), s 25(12)(b) (concerning donations by individuals to charities).¹²¹

243. At the same time, FA 1995, s 162 and Sch 29 Pt 8(8) repealed sections 660 to 676 of ICTA 1988 with effect from 1995-96 and subsequent years of assessment.

244. Section 347A of ICTA 1988 was omitted and repealed by the Finance Act 2007 (c.11) (“FA 2007”), ss 30, 114 and Sch 5 para 1(4), (5) and Sch 27 Pt 2(3) for payments made on or after 6 April 2007.

245. Section 59 of FA 1989 was repealed by Finance Act 2000 (c.17) (“FA 2000”), ss 41(7), (9), 156 and Sch 40 Pt 2(1) and n3, effective for covenanted payments falling to be made on or after 6 April 2000 (or 1 April for companies).

246. Section 25(12)(b) of FA 1990 was repealed by FA 2000, ss 39(1), (7), (10), 156 and Sch 40 Pt 2(1) and n4, effective (broadly speaking) for gifts and payments from 6 April 2000.

247. Although these provisions have been repealed, the amending provisions in *Schedule 17 paragraphs 24 and 26 to FA 1995* remain on the statute book. Their purpose is spent, and on that basis they should now be repealed.

¹¹⁹ Section 347A was first inserted into ICTA 1988 by the Finance Act 1988 (c.39), s 36.

¹²⁰ See FA 1995, Sch 17 para 24.

¹²¹ See FA 1995, Sch 17 para 26.

Finance Act 1996

(a) Foreign income dividends

248. The Finance Act 1996 (c.8) ("FA 1996"), s 153 and Sch 27 dealt with foreign income dividends.

249. The purpose of *section 153* was solely to introduce and give effect to the amendments to ICTA 1988 which were set out in Schedule 27 paragraphs 1 to 6 to FA 1996.

250. Schedule 27 paragraph 5 was repealed by the Finance (No. 2) Act 1997 (c.58) ("F (No. 2) A 1997"), s 52 and Sch 8 Pt 2(6) (in accordance with Schedule 3, excluding paragraph 11).

251. Likewise, Schedule 27 paragraphs 1 to 4 and 6 were repealed by F (No. 2) A 1997, s 52 and Sch 8 Pt 2(11) (in accordance with section 36 and Schedule 6).

252. Given that the whole of Schedule 27 has been repealed, *section 153 of FA 1996* is now redundant, and can be repealed.

(b) Paying and collecting agents

253. FA 1996, s 156 provided that Schedule 29 to the Act (which amended the rules relating to paying and collecting agents) should have effect. Schedule 29 amended ICTA 1988 (and, more particularly, inserted new sections 118A to 118K as a new Chapter VIIA in Part 4) and other tax statutes.

254. Schedule 29 to FA 1996 was repealed in whole by the Finance Act 2000 (c.17) ("FA 2000"), s 156 and Sch 40 Pt 2(17) and note 1. The repeal was to have effect in accordance with section 111(6)(a) of FA 2000. Section 111(1) provided that Chapter VIIA of Part 4 of ICTA 1988 was to cease to have effect, and section 111(6)(a) applied section 111(1) and the repeal to "relevant payments or receipts in relation to which the chargeable date for the purposes of [ICTA 1988] is on or after 1st April 2001".

255. FA 2000 did not, however, repeal the enabling provision - *section 156* - in FA 1996. *Section 156* is now unnecessary and should also be repealed.

(c) Authorised unit trusts

256. Section 73(4) of, and Schedule 6 to, FA 1996 dealt with taxation of income from savings at the lower rate. Schedule 6 amended ICTA 1988 and other tax statutes.

257. *Schedule 6 paragraph 11* amended section 468L of ICTA 1988 (by insertion of several subsections). Section 468L had originally been inserted into ICTA 1988 by Finance Act 1994 (c.9) ("FA 1994"), s 112 and Sch 14 paras 1, 2 and 7 in relation to distribution periods beginning on or after 1 April 1994. Section 468L dealt with distributions of authorised unit trusts (and, more particularly, interest distributions).¹²²

258. Section 468L was repealed by Finance (No. 2) Act 2005 (c.22) ("F (No. 2) A 2005"), ss 17(1)(a), 70 and Sch 11 Pt 2(3).¹²³ The repeal took effect in accordance with section 19(1), which provided that it was to come into force by Treasury order (which in turn prescribed that, for income tax, the repeal was to take effect from 2006-07 onwards and, for corporation tax, for accounting periods beginning on or after 1 April 2006 and for chargeable gains from disposals made on or after the same date).¹²⁴

259. However, the amending provision in *Schedule 6 paragraph 11 to FA 1996* was not repealed by F (No. 2) A 2005 or any later statute. It should now be repealed as being no longer required.

(d) Abolition of charge to tax under Schedule C

260. Section 79 of, and Schedule 7 to, FA 1996 abolished the charge to tax under Schedule C for 1996-97 onwards (for income tax) and for accounting periods ending after 31 March 1996 (for corporation tax), and, by amendments principally to ICTA 1988, transferred the liability to charge to Schedule D.

261. *Schedule 7 paragraph 20* amended ICTA 1988, s 512, which provision gave an exemption from income tax and corporation tax to the UK Atomic Energy Authority (UKAEA) and the National Radiological Protection Board (NRPB).

262. Section 512 was repealed by F (No. 2) A 2005, ss 46(2)(c), (d), (4)(c)-(e), 70 and Sch 11 Pt 2(12) with effect in relation to payments made on or after 1 April 2005

¹²² FA 1994, Sch 14 paras 1, 2 had inserted new sections 468H to 468R into ICTA 1988.

¹²³ F (No. 2) A 2005, Sch 11 Pt 2(3) repealed sections 468H to 468Q.

¹²⁴ See the Finance (No. 2) Act 2005, Section 17(1), (Appointed Day) Order 2006 (SI 2006 No. 982 (C.29)), art 2.

and (for section 512(2), which applied to pension schemes) in relation to income arising on or after that date.¹²⁵

263. The amending *Schedule 7 paragraph 20* to FA 1996 was not repealed by F (No. 2) A 2005 or any later statute. It is no longer necessary and should now be repealed.

264. *Schedule 7 paragraph 26* amended ICTA 1988 by inserting section 841A, defining the concept of a “recognised clearing system”, effective for income tax purposes for 1996-97 and subsequent years of assessment, and for corporation tax, for accounting periods ending after 31 March 1996. The new section 841A supplemented ICTA 1988, s 124 on “quoted Eurobonds”.

265. Section 841A was repealed by Finance Act 2000 (c.17) (“FA 2000”), s 156 and Sch 40 Pt 2(17) and note 2, with effect in relation to payments of interest made on or after 1 April 2001.¹²⁶

266. However, the amending *Schedule 7 paragraph 26 to FA 1996* was not repealed at that time, or subsequently. As it is now unnecessary it should be repealed.

(e) Loan relationships

267. Section 104 of, and Schedule 14 to, FA 1996 made minor and consequential amendments to ICTA 1988 and various other tax statutes in connection with loan relationships. *Schedule 14 paragraph 26* amended (by textual substitution) section 468L(5) of ICTA 1988.

268. Section 468L had been inserted into ICTA 1988 by the Finance Act 1994 (c.9) (“FA 1994”), s 112 and Sch 14 paras 1, 2 and 7, effective in relation to distribution periods beginning on or after 1 April 1994. Schedule 14 covered distributions of authorised unit trusts (for which, see above). Section 468L dealt with interest distributions, and sub-section (5) provided that interest distributions were not to be a charge on income for the purposes of section 338(1) (charges on income deducted from total profits). If the authorised unit trust had to account for income tax on the

¹²⁵ F (No. 2) A 2005, s 46(4)(c), (d) distinguished, in the context of subsection (2)(c), UKAEA in relation to which the ceasing to have effect would operate on or after 1 April 2005, and NRPB where the ceasing to have effect would operate “after 1 April 2005” only. Section 46(7) provided - by way of saving - that nothing in the section was to affect any accounting period of UKAEA ending before 1 April 2005 or any accounting period of the NRPB ending on or before 1 April 2005. This saving does not seem to require preservation now.

¹²⁶ The same provision in FA 2000 also repealed ICTA 1988, s 124.

distributions under section 349(2) of ICTA 1988,¹²⁷ then the distributions would be allowed as a deduction against profits of the authorised unit trust.

269. Section 468L was repealed by Finance (No. 2) Act 2005 (c.22) (“F (No. 2) A 2005”), ss 17(1)(a), 70 and Sch 11 Pt 2(3).¹²⁸ The repeal took effect in accordance with section 19(1), which provided that it was to come into force by Treasury order (which in turn prescribed that, for income tax, the repeal was to take effect from 2006-07 onwards and, for corporation tax, for accounting periods beginning on or after 1 April 2006 and for chargeable gains from disposals made on or after the same date).¹²⁹

270. However, the amending provision in *Schedule 14 paragraph 26 to FA 1996* was not repealed at that time, or since. The provision is now superseded and should be repealed.

(f) Discretions exercisable by the Board

271. Section 134 of, and *Schedule 20 paragraph 38* to, FA 1996 amended section 812 of ICTA 1988 (discussed above): in the main it substituted text for existing words. *Section 812* is recommended earlier in this note for repeal. If it is repealed, then *Schedule 20 paragraph 38* should as a consequence also be repealed.

(g) Self-assessment time limits

272. Section 135 of, and Schedule 21 to, FA 1996 provided for the modification of time limits in connection with self-assessment procedures. The Schedule amended various tax statutes from ICTA 1988 through to FA 1994.

273. *Schedule 21 paragraph 19* to FA 1996 amended section 691(4) of ICTA 1988 by substituting text within the subsection which altered the time limit for giving notice of election by settlement trustees in connection with maintenance funds for historic buildings. Section 691 was subsequently repealed by Income Tax Act 2007 (c.3) (“ITA 2007”), ss 1027, 1031, 1034 and Sch 1 paras 1, 149 and Sch 3 Pt 1, with effect for income tax purposes for the tax year 2007-08 and subsequent tax years, and for corporation tax purposes for accounting periods ending after 5 April 2007.

¹²⁷ Section 349(2) imposed an obligation to deduct income tax at source from certain payments of yearly interest. Section 468L(1), (2) deemed the making of payments of yearly interest by the authorised unit trust, whether or not any interest distributions were actually made, and income tax had then to be accounted for.

¹²⁸ F (No. 2) A 2005, Sch 11 Pt 2(3) repealed sections 468H to 468Q.

¹²⁹ See the Finance (No. 2) Act 2005, Section 17(1), (Appointed Day) Order 2006 (SI 2006 No. 982 (C.29)), art 2 (cited above).

274. However, *Schedule 21 paragraph 19* was not repealed by ITA 2007 or later legislation. The provision is now superseded and may be repealed.

275. *Schedule 21 paragraph 45* to FA 1996 substituted text for section 41(6) of the Finance (No. 2) Act 1992 (c.48) (“F (No. 2) A 1992”). Sections 41 to 43 dealt with relief against profits for film-makers. Subsection (6) of section 41 prescribed a 2-year time limit for submission of a claim for tax relief on relevant expenditure. The amending provision in the FA 1996 differentiated between claims for income tax purposes and those for corporation tax purposes. Section 41(6) was further amended by the Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”), ss 882(1), 883 and Sch 1 paras 452, 457(1),(3) (effective, for income tax purposes, for the year 2005-06 and subsequent tax years, and for corporation tax purposes, for accounting periods ending after 5 April 2005), by substituting text which removed the differentiation and simplified the 2-year time limit formula.

276. Section 41 of F (No. 2) A 1992 was repealed by Finance Act 2006 (c.25) (“FA 2006”), s 178 and Sch 26 Pt 3(4),¹³⁰ effective for expenditure from (by sections 46, 47) 19 July 2006. However, the amending provision in *Schedule 21 paragraph 45* to FA 1996 has not been repealed. Nor has the later amendment in *Schedule 1 paragraph 457(3) to ITTOIA 2005*. As both provisions have been superseded they can now be repealed.

277. *Schedule 21 paragraph 46* to FA 1996 amended section 42(6) of F (No. 2) A 1992. Section 42 allowed a film-maker to deduct from taxable profits revenue expenditure on film production, and revenue expenditure on the acquisition of a master negative and soundtrack, or any master tape or master disc of a film. Subsection (6) of section 42 prescribed the time limit for a claim. The amending provision in the FA 1996 also differentiated between income tax and corporation tax claims (using different formulae), and made such claims (once made) “irrevocable”. Further amendment of section 42(6) was effected by ITTOIA 2005, s 882(1), 883 and Sch 1 paras 452, 458(1), (4) (operative, for income tax purposes, for the year 2005-06 and subsequent years, and for corporation tax purposes, for accounting periods ending after 5 April 2005) which substituted text and also made the time limit formula less complex.

¹³⁰ This provision in FA 2006, Sch 26 repealed sections 40A to 43 inclusive.

278. Section 42 of F (No. 2) A 1992 was repealed by FA 2006, ss 46(3), 178 and Sch 26 Pt 3(4), thus withdrawing existing corporation tax reliefs, effective for production expenditure on a film that commenced principal photography on or after 1 April 2006, and for acquisition expenditure on a film that commenced principal photography on or after 1 April 2006 or that was incurred on or after 1 October 2007. However, neither the superseded *Schedule 21 paragraph 46 to FA 1996* nor *Schedule 1 paragraph 458(4) to ITTOIA 2005* have been repealed. That should now occur in both instances.

279. *Schedule 21 paragraph 48 to FA 1996* amended section 118 of the Finance Act 1994 (c.9) ("FA 1994"). Section 118 dealt with capital allowances in respect of expenditure on machinery or plant. A first year allowance could not be granted by the Revenue for a chargeable period except where, for a chargeable period ending on or after 30 November 1993, notice in prescribed form had been given to the inspector within 2 years of the end of the period, and for a chargeable period ending before the specified date, notice had been given (put here in broad terms only) within 3 years of the end of the period.

280. The amendment by the FA 1996 involved the substitution of words in section 118(3) and insertion of a new section 118(3A). The substitution changed reference to "an inspector" to "an officer of the Board", and adjusted the 2-year time limit for giving notice by reference to subsection (3A). Subsection (3A) provided different time limit formulations for the purposes of income tax and of corporation tax.

281. Section 118(3), (3A) of FA 1994 were repealed by the Finance Act 2000 (c.17) ("FA 2000"), ss 73(1)(a), (2), 156 and Sch 40 Pt 2(8) and note (effective for chargeable periods as respects which the period specified in section 118(3A) ended on or after 1 April 2000). However, the amending provision in *Schedule 21 paragraph 48 to FA 1996* was not repealed then or later. It can now be repealed.

(h) Tax avoidance: controlled foreign companies

282. Section 182 of, and Schedule 36 to, FA 1996 amended ICTA 1988, Part 17 Chapter 4¹³¹ (which regulated the taxation of companies resident outside the UK for tax purposes, but controlled by persons resident within the UK) and had effect in relation to accounting periods of a controlled foreign company (as defined) beginning on or after 28 November 1995. If chargeable profits (also defined) of a controlled foreign company

¹³¹ Chapter 4 covered sections 747 to 756 inclusive, and Schedules 24 to 26.

were apportioned to a UK resident company, the UK resident company was treated as if it were liable to corporation tax on those profits. As originally enacted, Part 17 Chapter 4 of ICTA 1988 only applied in a given case if the Board so directed under section 747(1). The UK company did not have to self-assess its liability under this Chapter.

283. *Schedule 36 paragraph 1* amended section 747A of ICTA 1988 (as amended), which related to the special rule for computing chargeable profits. Section 747A had been inserted into ICTA by the Finance Act 1995 (c.4) (“FA 1995”), s 133 and Sch 25 paras 1(a), 2. The amendment was designed “to secure that in certain cases the chargeable profits of a company resident outside the United Kingdom are to be computed and expressed in the currency used in its accounts” as required by the law of the home state.

284. Subsequently section 747A of ICTA 1988 was repealed, in connection with accounting practice, by the Finance Act 2005 (c.7) (“FA 2005”), ss 80(1), 104 and Sch 4 para 24 and Sch 11 Pt 2(6), in relation to accounting periods beginning on or after 16 March 2005. However, the amending provision in *Schedule 36 paragraph 1* to FA 1996 was only partially repealed by FA 2005, Sch 11 Pt 2(6), which showed the extent of repeal as “In Schedule 36, paragraph 1(3)(b) and (c)”. That left in place paragraph 1(1), (2) and (3)(a).

285. *Schedule 36 paragraph 1(1)* simply introduced the amendments to section 747A. Once all the amendments have been made or repealed, the provision is spent. Likewise, *paragraph 1(2)* simply provided for the omission of subsection (7) within section 747A. Given that the whole of section 747A has been repealed, this sub-paragraph is also spent.

286. *Schedule 36 paragraph 1(3)(a)* omitted words from section 747A(8). That provision is now also spent. On that basis, the whole of *Schedule 36 paragraph 1* has been superseded and should be repealed.

287. *Schedule 36 paragraph 3(11)* to FA 1996 amended Schedule 24 paragraph 11 to ICTA 1988, which related to the calculation of capital allowances. In particular, in specified circumstances, *paragraph 11* enabled the Board to require certain assumptions to be made in calculating allowances. *Paragraph 11(2)* defined the expression “the starting period” in this context. *Schedule 36 paragraph 3(11)*

substituted text within paragraph 11(2) which retained reference to a section 747(1) direction but added an alternative reference to “an ADP exempt period”. ADP in this context means an “acceptable distribution policy” for an accounting period.¹³² The amendment took effect in relation to accounting periods of a controlled foreign company beginning on or after 28 November 1995.

288. The Finance Act 1998 (c.36) (“FA 1998”) brought Part 17 Chapter 4 of ICTA 1988 within the corporation tax self-assessment regime and, accordingly, abolished the requirement for a Board’s direction under ICTA 1988, s 747(1). In consequence, Schedule 24 paragraph 11 to ICTA 1988 - which similarly referred to intervention by the Board - was repealed by FA 1998, ss 113, 165 and Sch 17 paras 22, 37(1), (2) and Sch 27 Pt 3(27), with effect as respects accounting periods of companies resident in the UK which ended on or after 1 July 1999. However, the amending provision in *Schedule 36 paragraph 3(11)* to FA 1996 was not repealed. The provision has been superseded and should now be repealed.

289. Section 198 of, and Schedule 37 to, FA 1996 redefined “bank” for certain purposes in ICTA 1988 and other tax statutes. *Schedule 37 paragraph 11(2)(b)* amended section 18 of the Taxes Management Act 1970 (c.9) (“TMA 1970”) by inserting a definition of “bank” into the section via a new subsection (3AA). Section 18 disappplied, in respect of banks (as redefined), the obligation to supply certain information.¹³³

290. Section 18(3AA) of TMA 1970 was repealed by the Finance Act 2000 (c.17) (“FA 2000”), ss 145(5), (11), 156 and Sch 40 Pt 5 and note, effective in relation to amounts paid, credited or received on or after 6 April 2001. However, the amending provision in *Schedule 37 paragraph 11(2)(b) to FA 1996*, although superseded, remains operative. It should now be repealed.

Finance Act 1997

291. The Finance Act 1997 (c.16) (“FA 1997”), s 61 (which dealt with the phasing-out of relief for profit-related pay under Schedule E) amended,¹³⁴ and then brought to an

¹³² See ICTA 1988, s 748(1)(a) and Sch 25 para 2, which were repealed by Finance Act 2009 (c.10) (“FA 2009”), s 36 and Sch 16 para 1.

¹³³ The meaning to be given to “bank”, as set out in Schedule 37 paragraph 11(1), was by reference to the definition in section 840A of ICTA 1988 (as inserted by FA 1996, s 198 and Sch 37 para 1(1)).

¹³⁴ The amendment (by substitution of lower financial limits on relief) was made to ICTA 1988, s 171(4).

end, the effect of Part 5 Chapter 3 of ICTA 1988. More specifically, section 61 provided-

- that Chapter 3 would have no effect in relation to any payment made by reference to a profit period beginning on or after 1 January 2000
- that no scheme was to be registered under Chapter 3 if the only payments for which it provided were payments by reference to profit periods beginning on or after that date, and
- that registration under Chapter 3 was to end on 31 December 2000.

292. Chapter 3 (which embraced sections 169 to 184 inclusive) was repealed by FA 1997, ss 61(2), 113 and Sch 18 Pt 6(3) and n2, with effect in relation to any payment made by reference to a profit period beginning on or after 1 January 2000. However, the Act made clear (by way of saving) that the repeals in Part 6(3) were not to “affect the operation of any of the repealed provisions, or prevent the exercise of any power under those provisions, in relation to profit periods beginning before 1st January 2000 or for purposes connected with, or with the doing or not doing of anything in or relation to, any such periods”.

293. No provision was made in that Act or subsequently for repeal of section 61. Given that Chapter 3 has been repealed, and that the key dates in section 61 have passed, *section 61* is now spent and can be repealed.

Finance (No. 2) Act 1997

(a) Withdrawal of relief on medical insurance premiums

294. The *Finance (No. 2) Act 1997 (c.58)* (“*F (No. 2) A 1997*”), *section 17* adjusted the relief provisions relating to medical insurance premiums set out in section 54 of the Finance Act 1989 (c.26) (“*FA 1989*”), s 54. Section 54 provided the means whereby medical insurance premium payments made by persons aged 60 or more, and resident in the UK, to a “qualifying insurer” (as defined in section 55(8)) were to be deductible from income for tax purposes. By section 55(2)(b) the relief was only available on an “eligible contract” with a duration of no more than one year.

295. The 1997 adjustment involved withdrawal of the relief on a phased basis for the year 1997-98 and subsequent years of assessment. In broad terms (as set out in section 17(1) of *F (No. 2) A 1997*, but subject to the specific provisions in subsections (2) and (3)) relief was not to be given for any payment where either –

“(a) the premium in respect of which the payment is made is a premium under a contract entered into on or after 2nd July 1997; or
(b) the payment is received by the insurer on or after 6th April 1999.”

296. Section 54 of FA 1989 (along with sections 55 to 57) was repealed by F (No.2) A 1997, s 52 and Sch 8 Pt 2(2) and note, with effect for the year 1997-98 and subsequent years of assessment, subject to a saving which read -

“except in relation to the cases in which the relief that has been or may be given under section 54 of the Finance Act 1989 in respect of any payment is unaffected by the provisions of section 17(1) of this Act.”

297. Section 17(2), (3) of F (No. 2) A 1997 provided that the withdrawal of relief by section 17(1) was not to “affect the giving of relief in respect of a payment received by an insurer before 6th April 1999” where that payment was for a premium made under a contract entered into on or after 2 July 1997 but before 1 August of that year, and certain other conditions were fulfilled.

298. The exception specified in Schedule 8 to F (No. 2) A 1997 is now spent because the underlying provision has expired (6 April 1999 having passed). On that basis *section 17 of F (No. 2) A 1997* can be repealed.

(b) Taxation of dealers in respect of distributions

299. F (No. 2) A 1997, *section 25(1), (8)* dealt with consequential amendments following on from the repeal of ICTA 1988, s 95(5). Section 95 provided that where a company purchased its own shares from a dealer, the purchase price was to be taken into account in taxing the dealer’s receipts under Schedule D. Section 95(5) contained definitions for “fixed-rate preference shares” and other matters within the section.

300. Section 95(5) was repealed by F (No. 2) A 1997, s 52 and Sch 8 Pt 2(8) and n 1, in accordance with section 24 of that Act, that is to say, in relation to any distribution made on or after 2 July 1997. Section 24(1), (8) provided that section 95(5) of ICTA 1988 (definitions) was to be omitted.

301. As a result of the repeal of section 95(5), adjustment needed to be made to section 246A(9) of ICTA 1988. Section 246A¹³⁵ had been inserted by Finance Act 1994 (c.9) (“FA 1994”), s 138 and Sch 16 para 1 in relation to any foreign source profit consisting of income for, or a chargeable gain for, an accounting period beginning on or after 1 July 1993, or any dividend paid on or after 1 July 1994, and provided for election

¹³⁵ Along with sections 246B to 246Y, as part of a new Part 6 Chapter 5A in ICTA 1988.

by a company paying a dividend for that dividend to be treated as “a foreign income dividend”. Section 246A(9) - in its original form - indicated that the expression “fixed-rate preference shares” in the section was to be construed in accordance with section 95(5) of ICTA 1988.

302. The adjustment to section 246A(9) was made by section 25(1) of F (No. 2) A 1997, which substituted reference to “paragraph 13(6) of Schedule 28B” in place of “section 95(5)”.¹³⁶

303. Section 246A was repealed by F (No. 2) A 1997, ss 36(4), 52 and Sch 6 para 3 and Sch 8 Pt 2(11) (foreign income dividends), with effect in relation to distributions made on or after 6 April 1999, but subject to the transitional provisions set out in Schedule 6 paragraphs 22, 23.

304. On the basis that both section 95(5) and section 246A of ICTA 1988 have been repealed, *section 25(1) of F (No. 2) A 1997* should also now be repealed.

305. *Section 25(5) to (7)* amended Schedule 7 paragraph 5 to the Finance Act 1997 (c.16) (“FA 1997”). Section 69 and Schedule 7 made provision for the treatment of company distributions arising on the purchase by the company of its own shares. The Schedule applied to “any qualifying distribution” as specified. Paragraph 5(1) provided that :

“A qualifying distribution consisting in a dividend on a fixed-rate preference share does not fall within paragraph 1(3) above by reason only that any of the specified matters is made referable to the terms on which the share was issued.”

Paragraph 5(2) then defined “fixed-rate preference share” by reference to section 95(5) of ICTA 1988.

306. Schedule 7 paragraph 5 to FA 1997 was repealed by F (No. 2) A 1997, ss 36(4), 52 and Sch 6 para 21(3) and Sch 8 Pt 2(11), with effect in relation to distributions made on or after 6 April 1999. As indicated above, section 95(5) of ICTA 1988 was also repealed by F (No. 2) A 1997.

¹³⁶ Schedule 28B to ICTA 1988 had been inserted by Finance Act 1995 (c.4) (“FA 1995”), s 70(2) and Sch 14 (on venture capital trusts), and was subsequently repealed by Income Tax Act 2007 (c.3) (“ITA 2007”), ss 1027, 1031, 1034 and Sch 1 paras 1, 240 and Sch 3 Pt 1.

307. On this basis, *section 25(5) to (7) of F (No. 2) A 1997* has now been superseded and should be repealed.

(c) Transitional relief for charities

308. *Section 35 of, and Schedule 5 to, F (No. 2) A 1997* applied transitional relief for charities by reference to section 505 of ICTA 1988. As originally framed, section 505 provided a range of tax exemptions for charities in respect of income arising from lands held or occupied, interest, annuities and trade (under Schedules A to D and F as appropriate), where such income related to the body's charitable purposes.

309. Section 35 of F (No. 2) A 1997 provided that where a UK-resident company made a "qualifying distribution" on or after 6 April 1999 and before 6 April 2004 (*ie* in the five tax years spanning 1999-2000 to 2003-04), and that distribution was received by a "section 505 body", then the charitable body would ordinarily be entitled to be paid by the Revenue amounts (as tax repayments) on a diminishing sliding scale.¹³⁷

310. Section 35(5) gave effect to Schedule 5 which removed or restricted entitlement to payment under the section in certain circumstances; and section 35(7) provided that no claim could be made under the provisions "later than two years after the end of the chargeable period of the section 505 body in which the distribution is made" *ie* after 5 April 2006. Schedule 5 set out limitations on entitlement to relief under section 35, in relation both to certain qualifying distributions and to bonus issues.

311. H.M. Revenue and Customs are of the view that *section 35 of, and Schedule 5 to, F (No. 2) A 1997* are now spent, and they can be repealed.

312. *Section 231B(4)(d) of ICTA 1988* was inserted into that Act by section 28 of F (No. 2) A 1997, with effect in relation to distributions made on or after 2 July 1997. Section 231B dealt with the consequences of certain arrangements to pass on the value of a tax credit in respect of a qualifying distribution. *Section 231B(4)(d)* provided that, where the provisions of the section applied:

"no claim shall be made under section 35 of the Finance (No. 2) Act 1997 (transitional relief) for payment of an amount determined by reference to that distribution."

¹³⁷ Section 35(2) set out the scale of amounts payable annually, *viz* where the distribution was made in 1999-2000, the amount was 21% of the value of the distribution; by 2003-04 (the final year) the amount had dropped to 4%. The intent was to provide transitional relief for charities for the loss of tax credits from dividends received.

As a consequence of the proposed repeal of section 35, *section 231B(4)(d) of ICTA 1988* should also be repealed.

[Note: these repeals will need to be revisited if the repeals of F (No. 2) A 1997, s 35 and Sch 5 are enacted via the current Finance (No. 3) Bill 2011, as envisaged by HMRC]

(d) Insurance companies and friendly societies: overseas life assurance business

313. *Section 23 of, and Schedule 3 to, F (No. 2) A 1997* made a series of amendments to ICTA 1988 and other tax statutes relating to the taxation of insurance companies and friendly societies.

314. *Schedule 3 paragraph 9* amended section 441A of ICTA 1988. Section 441A had been inserted (along with a substitution of section 441) by Finance Act 1990 (c.29) (“FA 1990”), s 42 and Sch 7 paras 3, 10(1), applicable for accounting periods beginning on or after 1 January 1990. The new section 441 dealt with overseas life assurance business carried on by UK resident insurance companies, and section 441A provided for tax credits in respect of certain distributions.

315. The amendment of section 441A by *Schedule 3 paragraph 9* to F (No. 2) A 1997 involved the repeal of subsection (1),¹³⁸ and the substitution of words in subsection (2) to make clear that “distribution” meant “a distribution in respect of any asset of its overseas life assurance fund”. These amendments were to take effect in relation to distributions made on or after 2 July 1997.¹³⁹

316. *Schedule 4 paragraph 28(1) and Schedule 8 Pt 2(10) to F (No. 2) A 1997* then went on to repeal section 441A(2), with effect in relation to distributions made on or after 6 April 1999 (some 21 months later).¹⁴⁰ As a consequence, the amendment made to subsection (2) by *Schedule 3 paragraph 9(3)* is now superseded. Because *paragraph 9(1)* was only an activating provision (activating the amendments following), *paragraph 9(2)* has been repealed, *paragraph 9(3)* is superseded, and *paragraph 9(4)* gave effect generally to the paragraph 9 amendments from the date specified, the whole of *Schedule 3 paragraph 9* to F (No. 2) A 1997 can now be repealed.

¹³⁸ Schedule 3 paragraph 9(2) provided that section 441A(1) was to cease to have effect, and section 52 and Schedule 8 Pt 2(6) provided for its repeal in accordance with Schedule 3.

¹³⁹ See Schedule 3 paragraph 9(4).

¹⁴⁰ The repeal embraced section 441A(2) to (8), in other words, the whole of the remaining portion of section 441A.

(e) Overseas life insurance companies: Lloyd’s underwriters

317. Section 34 of, and Schedule 4 to, F (No. 2) A 1997 gave effect to miscellaneous provisions relating to tax credits and the taxation of company distributions. By *Schedule 4 paragraph 29* amendments were made to Schedule 19AC to ICTA 1988.

318. Section 444B and Schedule 19AC had been inserted into ICTA 1988 by the Finance Act 1993 (c.34) (“FA 1993”), s 97 and Sch 9 para 1 (making modifications to the principal Act), and were later repealed by the Overseas Life Insurance Companies Regulations 2006 (SI 2006 No. 3271), reg 43(1) and Schedule, Pt 1 (made under FA 1993, s 156), effective in relation to periods of account ending on or after 31 December 2006.

319. The amendments made by *Schedule 4 paragraph 29 to F (No. 2) A 1997* involved the ceasing to have effect of words in Schedule 19AC paragraph 9(1) (within a notionally inserted section 434(1D) of ICTA 1988), and of Schedule 19AC paragraph 11A(2) (which modified section 441A(2), (3) of ICTA 1988), both having effect in relation to distributions made on or after 6 April 1999. Given that those amendments are spent, and that Schedule 19AC to ICTA 1988 has been repealed, the amending provision in *Schedule 4 paragraph 29 to F (No. 2) A 1997* can also now be repealed. It was not repealed previously.

Finance Act 1998

(a) Corporation tax: periodic payments and ACT

320. The Finance Act 1998 (c.36) (“FA 1998”), section 30 amended the Taxes Management Act 1970 (c.9) (“TMA 1970”) by making further provision as to when corporation tax was due and payable. Section 30(1) inserted a new section 59E into TMA 1970 (which contained power for the Treasury to make regulations for, amongst other things, determining the dates on which amounts of corporation tax would become due and payable).¹⁴¹

321. *Section 30(2)* enabled the Treasury to make provision by regulation for the payment of amounts to the Board where a company had taken action either to delay the application of the section 59E payment regulations, or to delay or avoid their full effect, and the action had taken place on or after 25 November 1997 and before 30

¹⁴¹ TMA 1970, s 59E was subsequently amended by Finance Act 2002 (c.23), s 92(2).

June 2002. Under section 30(2) transitional regulations were made: the Corporation Tax (Instalment Payments) Regulations 1998.¹⁴² These regulations made provision in the main for quarterly instalment payments of corporation tax by large companies. They came into force on 7 January 1999 and had effect for accounting periods ending on or after 1 July 1999. Regulation 4 made transitional provision for instalments payments in relation to accounting periods spanning the timeframe 1 July 1999 to 1 July 2002, and regulation 14 contained an anti-avoidance provision for the period 25 November 1997 to 30 June 2002.¹⁴³

322. *Section 30(3)-(6)* made ancillary provision in connection with the various regulations which could be made under the section.

323. HMRC believe that the enabling *FA 1998, s 30(2)-(6)* is now spent and should be repealed. The 1998 regulations, by contrast, are still required for the time being (and a specific saving within the Bill has been drafted to that effect).

324. As a consequence of repeal of *section 30(2)-(6)* reference to section 30 as a whole can also be removed from the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (SI 2003 No. 282) in regulation 2(1), which regulation deals with scope of the regulations. The words “30 or” in *regulation 2(1)(a)(iii)* should be omitted.¹⁴⁴

325. *FA 1998, s 31 and Sch 3* provided for the abolition of advance corporation tax (ACT). By section 31(1) no UK-resident company was to be liable to pay ACT in respect of any “qualifying distribution” made on or after 6 April 1999.

326. Section 31(5) gave effect to *Schedule 3* to the Act which made provision for, and in connection with, the abolition of ACT. *Schedule 3* comprised 48 paragraphs. Their purpose was as follows -

- *paragraph 1* - provided that the words “(including advance corporation tax)” were to cease to have effect in section 1(1) of the Provisional Collection of Taxes Act 1968 (c.2) (“PCTA 1968”) in relation to distributions made on or after 6 April 1999. By *FA 1998, s 165 and Sch 27 Pt 3(2)* those words were

¹⁴² SI 1998 No. 3175 (“the 1998 regulations”). These regulations were made additionally under powers in the TMA 1970 and ICTA 1988.

¹⁴³ Regulation 14 of the 1998 Regulations is due to be revoked, as spent, by the Corporation Tax (Instalment Payments) (Amendment) Regulations 2011, reg 18, when made and in force.

¹⁴⁴ Reference to section 30 as a whole may be omitted because TMA 1970, s 59E (inserted by section 30(1)) is mentioned separately in its own right in regulation 2(1)(a)(i).

also formally repealed in PCTA 1968 in accordance with *Schedule 3. Paragraph 1* is now spent and may be repealed.

- *paragraph 2* - provided that section 10(4) of the Taxes Management Act 1970 (c.9) (“TMA 1970”) was to cease to have effect in relation to accounting periods beginning on or after 6 April 1999. By FA 1998, s 165 and Sch 27 Pt 3(2) section 10(4) was formally repealed in accordance with *Schedule 3*. Consequently, *paragraph 2* is now spent and may be repealed.
- *paragraph 3* - amended section 87 of TMA 1970 by, amongst other things, deleting references to Schedule 13 to ICTA 1988 (which had been substituted subsequently in place of reference to Schedule 9 to ICTA 1970), and by removing reference to ACT, effective in relation to accounting periods beginning on or after 6 April 1999. Section 87 as a whole has now been replaced by Income Tax Act 2007 (c.3) (“ITA 2007”), ss 1027, 1034 and Sch 1 paras 242, 258, effective for income tax purposes for the tax year 2007-08 and subsequent years, and for corporation tax for accounting periods after 5 April 2007. On this basis the amending *paragraph 3* is superseded and may be repealed.
- *paragraph 4* - amended section 87A of TMA 1970 (as inserted by the Finance (No. 2) Act 1987 (c.51) (“F (No. 2) A 1989”), s 85 in relation to accounting periods ending after 30 September 1993) by the cessation of effect of three subsections, for periods beginning on or after 6 April 1999 (and formally repealing those subsections in Schedule 27 Pt 3(2)). Section 87A, which relates to interest on overdue corporation tax, continues to exist, subject to later amendments. Accordingly the amending *paragraph 4* is now spent and may be repealed.
- *paragraph 5* - effected the repeal (with Schedule 27 Pt 3(2)) of section 94(8) of TMA 1970, which dealt with surplus ACT, for accounting periods beginning on or after 6 April 1999. *Paragraph 5* is now spent and may be repealed.
- *paragraph 6* - amended section 109(3A) of TMA 1970, dealing with corporation tax on certain close company loans, which subsection had been inserted into the TMA 1970 by F (No. 2) A 1987, s 91. Although section 109 has since been amended, the section as a whole is still in force. On that basis, *paragraph 6* is **not** spent and must be retained.
- *paragraph 7* - amended section 13 of the Income and Corporation Taxes Act 1988 (c.1) (“ICTA 1988”) (on small companies’ relief) by substitution and

insertion of subsections for distributions made on or after 6 April 1999. Section 13 of ICTA 1988, and *Schedule 3 paragraph 7* were both subsequently repealed by Corporation Tax Act 2010 (c.4) (“CTA 2010”), s 1181 and Sch 3 Pt 1, taking effect on and after 1 April 2010. Consequently **no** further repeal is required.

- *paragraph 8* - amended section 14 of ICTA 1988 (dealing with ACT and qualifying distributions) by deleting subsections (1) and (3) to (5) (which were also formally repealed by Schedule 27 Pt 3(2)). Consequently, *paragraph 8* is now spent and may be repealed.
- *paragraph 9* - amended section 75 of ICTA 1988 by deleting words within subsection (2) in relation to distributions made on or after 6 April 1999. Section 75 was substituted as a whole subsequently by the Finance Act 2004 (c.12) (“FA 2004”), ss 38(1), (5), 42(1), with effect for accounting periods beginning on or after 1 April 2004. On that basis *paragraph 9* has now been superseded and may be repealed.
- *paragraph 10* - amended section 116 of ICTA 1988 (relating to arrangements for transferring relief) by deleting subsection (2)(d) in relation to accounting periods beginning on or after 6 April 1999. Section 116 and FA 1998, *Sch 3 para 10* were both repealed by CTA 2010, s 1181 and Sch 3 Pt 1, effective on and after 1 April 2010. On that basis **no** further repeal is required.
- *paragraph 11* - deleted and, with section 165 and Schedule 27 Pt 3(2), formally repealed section 238 of ICTA 1988 (relating to collection of ACT), effective in relation to accounting periods beginning on or after 6 April 1999. Consequently, *paragraph 11* is now spent and may be repealed.
- *paragraph 12* - deleted and, with section 165 and Schedule 27 Pt 3(2), formally repealed section 239 of ICTA 1988 (set-off of ACT), in relation to accounting periods beginning on or after 6 April 1999. As a consequence, *paragraph 12* is now spent and may be repealed.
- *paragraph 13* - provided that section 240 of ICTA 1988 was to cease to have effect (along with section 165 and Schedule 27 Pt 3(2) which formally repealed the section), effective in relation to accounting periods of the surrendering company beginning on or after 6 April 1999. Consequently, *paragraph 13* is now spent and may be repealed.
- *paragraph 14* - provided that section 241 of ICTA 1988 (ACT calculation for franked investment income) was to cease to have effect (along with section

165 and Schedule 27 Pt 3(2) which formally repealed the section), for accounting periods beginning on and after 6 April 1999. *Paragraph 14* is now spent and may be repealed.

- *paragraph 15* - provided that section 245 of ICTA 1988 (ACT on ownership change) was to cease to have effect, and was formally repealed (by section 165 and Schedule 27 Pt 3(2)), for changes in ownership occurring on or after 6 April 1999. *Paragraph 15* is now spent and may be repealed.
- *paragraphs 16 and 17* - provided that sections 245A and 245B of ICTA 1988 (which had been inserted by Finance Act 1989 (c.26) ("FA 1989"), s 98 for cases where change of company ownership occurred on or after 14 March 1989) were to cease to have effect in relation to changes in ownership or disposals on or after 6 April 1999, and were (by section 165 and Schedule 27 Pt 3(2)) to be formally repealed from that date. Accordingly, *paragraphs 16 and 17* are now spent and may be repealed.
- *paragraph 18* - deleted, and by section 165 and Schedule 27 Pt 3(2) formally repealed, section 246 of ICTA 1988 (ACT changes of rate), effective in relation to distributions made on or after 6 April 1999. *Paragraph 18* is now spent and may be repealed.
- *paragraph 19* - amended section 247 of ICTA 1988 (relating to dividends paid by one group member to another) by deleting various subsections either in whole or in part (*paragraph 19(2), (4)(b), (5) to (7)*), and by substituting text in subsections (4) and (5) (*paragraph 19(3) and (4)(a)*), in relation to distributions made on or after 6 April 1999. Subsequently, section 247 was repealed in whole (with section 248) by Finance Act 2001 (c.9) ("FA 2001"), ss 85(5), (6), 110 and Sch 33 Pt 2(10) with effect in relation to payments made after 11 May 2001, along with *Schedule 3 paragraph 19(3) and (4)(a)* to FA 1998. As a consequence, the remainder of *paragraph 19* is now spent and can be repealed.
- *paragraph 20* - amended section 248 of ICTA 1988 (supplemental provisions) by deleting words in subsections (2) and (3), and repealed by Schedule 27 Pt 3(2), effective in relation to distributions made on or after 6 April 1999. As indicated above, section 248 was repealed by the FA 2001 and, on that basis, the amending *paragraph 20* can also now be repealed as spent.
- *paragraph 21* - amended section 252 of ICTA 1988 (rectification of excessive ACT set-off) by deleting subsection (1)(a) in that section, and

repealing it by Schedule 27 Pt 3(2), in relation to accounting periods beginning on or after 6 April 1999. Section 252 is still operative, but the amending *paragraph 21* is now spent and may be repealed.

- *paragraph 22* - deleted, and by Schedule 27 Pt 3(2) repealed, section 253(2) of ICTA 1988 and portions of subsections (1) and (3), in relation to accounting periods beginning on or after 6 April 1999. The amendments by *paragraph 22* are now spent (although section 253 remains operative), and thus it can now be repealed.
- *paragraph 23* - deleted, and by Schedule 27 Pt 3(2) repealed, section 255 of ICTA 1988 (relating to distributions and ACT), effective in relation to distributions made on or after 6 April 1999. The provision in *paragraph 23* is now spent and can be repealed.
- *paragraph 24* - amended section 419 of ICTA 1988 (loans to participators) by making substitutions and insertions within the section. Part 11 Chapter 2 of ICTA 1988 (which includes section 419), and *Schedule 3 paragraph 24* to FA 1998, were later both repealed by Corporation Tax Act 2010 (c.4) ("CTA 2010"), s 1181 and Sch 3 Pt 1, effective for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years (section 1184). On that basis, **no** further repeal is required of *paragraph 24*.
- *paragraph 25* - amended section 434 of ICTA 1988 by deleting subsections (3), (6) and (8), which subsections were also repealed by Schedule 27 Pt 3(2), effective for distributions made, or accounting periods beginning, on or after 6 April 1999. Section 434 survives in heavily amended form. *Paragraph 25* is now spent and may be repealed.
- *paragraph 26* - ceased the effectiveness of section 434C of ICTA 1988 (interest on repayment of ACT) in relation to distributions made on or after 6 April 1999. The provision was also repealed by Schedule 27 Pt 3(2). Section 434C had been inserted into ICTA 1988 by Finance Act 1995 (c.4) ("FA 1995"), s 51 and Sch 8 paras 22, 54. *Paragraph 26* is now spent and may be repealed.
- *paragraph 27* - amended section 468Q of ICTA 1988 (dividend distribution), which section had been inserted by the Finance Act 1994 (c.9) ("FA 1994"), s 112 and Sch 14 paras 1, 2 and 7. Section 468Q was then repealed by the Finance (No. 2) Act 2005 (c.22) ("F (No. 2) A 2005"), ss 17(1)(a), 19(1), 70 and Sch 11 Pt 2(3) as from 2006-07 for income tax and, for corporation tax,

for accounting periods beginning on or after 1 April 2006.¹⁴⁵ The amending *paragraph 27*, which was not repealed, is now superseded and may be repealed.

- *paragraph 28* - amended section 490 of ICTA 1988 (companies carrying on mutual business, etc.) by deleting words relating to “group income” in subsection (1), with effect in relation to distributions made on or after 6 April 1999 (which words were also formally repealed by Schedule 27 Pt 3(2)). Section 490 is still alive, but the amending provision in *paragraph 28* is now spent, and may be repealed.
- *paragraph 29* - ceased the effectiveness of section 497 of ICTA 1988 (ACT and oil extraction activities) in relation to accounting periods beginning on or after 6 April 1999. Sections 497 to 499 were also repealed formally at the same time by Schedule 27 Pt 3(2). On that basis *paragraph 29* is now spent and may be repealed.
- *paragraph 30* - ceased the effectiveness of section 498 of ICTA 1988 in relation to accounting periods of the “surrendering company” beginning on or after 6 April 1999, subject to the caveat that where a “straddling period” (as defined) began before 6 April 1999 and ended on or after that date then an apportionment of a specified accounting period limit would be applied. Likewise, by Schedule 27 Pt 3(2), section 498 as a whole was repealed. On that basis *paragraph 30* is spent and may be repealed.
- *paragraph 31* - ceased the effectiveness of section 499 of ICTA 1988 in relation to distributions made on or after 6 April 1999, which section was also formally repealed by Schedule 27 Pt 3(2). *Paragraph 31* may now be repealed.
- *paragraph 32* - amended section 703 of ICTA 1988 (cancellation of tax advantage) by inserting a new subsection (3A), effective in relation to assessments made on or after 6 April 1999, and ceasing the effect of section 703(4) to (6) (relating to ACT) for the year 1999-2000 and subsequent years of assessment. The inserted section 703(3A) (which was income tax specific) was later repealed by the Income Tax Act 2007 (c.3) (“ITA 2007”), ss 1027, 1031, 1034 and Sch 1 paras 1, 154(1), (5) and Sch 3 Pt 1, with effect for income tax purposes for the tax year 2007-08 and subsequent tax years and, for corporation tax purposes, for accounting

¹⁴⁵ Commencement of the repeal provision under sections 17(1) and 19(1) was effected by the Finance (No. 2) Act 2005, Section 17(1), (Appointed Day) Order 2006 (SI 2006 No.982 (C.29)), art 2.

periods ending after 5 April 2007.¹⁴⁶ Similarly, *Schedule 3 paragraph 32(2), (4)* was repealed by ITA 2007, Sch 3 Pt 1. As a consequence, the remainder of *paragraph 32* is spent and may now be repealed.

- *paragraph 33* - amended section 704 of ICTA 1988 (prescribed circumstances) by ceasing the effect of paragraph A(d) in that section, and repeal of the provision was effected by Schedule 27 Pt 3(2), both operative in relation to distributions made on or after 6 April 1999. *Paragraph 33* is now spent and may be repealed.
- *paragraph 34* - amended section 705 of ICTA 1988 (appeals against notices) by the ceasing the effectiveness of subsections (6) to (8) (and by Schedule 27 Pt 3(2) repealing them) for the year 1999-2000 and subsequent years of assessment. Given that *paragraph 34* is now spent it may be repealed.
- *paragraph 35* - ceased the effectiveness within section 797 of ICTA 1988 of subsections (4) and (5) (limits on credit), and repealed those provisions by Schedule 27 Pt 3(2), in relation to accounting periods beginning on or after 6 April 1999. *Paragraph 35* is now spent and may be repealed.
- *paragraph 36* - ceased the effectiveness within section 802 of ICTA 1988 (UK insurance companies trading overseas) of words relating to “group income” in subsection (2)(a) in relation to distributions made on or after 6 April 1999 (and Schedule 27 Pt 3(2) repealed those words at the same time). Subsequently the whole of section 802 was repealed by Finance Act 2000 (c.17) (“FA 2000”), ss 103, 156 and Sch 30 para 14 and Sch 40 Pt 2(13), in relation to accounting periods beginning on or after 1 April 2000. On that basis the amending *paragraph 36* is now spent and may be repealed.
- *paragraph 37* - amended section 813 of ICTA 1988 by ceasing the effect of subsection (6)(b) (relating to recovery of tax credits paid) in relation to accounting periods beginning on or after 6 April 1999 (which provision was also repealed by Schedule 27 Pt 3(2)). Although the remainder of section 813 subsists, *paragraph 37* is now spent and may be repealed.
- *paragraph 38* - amended section 826 of ICTA 1988 (interest on tax overpaid) by ceasing the effect of four subsections: (2A), (7), (7AA) and

¹⁴⁶ Section 703(3A) of ICTA 1988 was rewritten to section 699 of ITA 2007. Section 703 was repealed as a whole by Corporation Tax Act 2010 (c.4), ss 1177, 1181 and Sch 1 para 94 and Sch 3 Pt 1 (as part of the repeal of Chapter 1 of Part 17 of ICTA 1988), effective for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years.

7(CA), effective - in broad terms - from 6 April 1999 (and Schedule 27 Part 3(2) repealed those subsections). *Paragraph 38* is now spent and may be repealed.

- *paragraph 39* - amended section 832 of ICTA 1988 (interpretation provisions) by substituting text within subsection (1), inserting a new subsection (4A) and ceasing the effect of certain definitions within subsection (1), effective in relation to (as appropriate) accounting periods beginning on or after 6 April 1999 or distributions made on or after that same date. The words deleted within subsection (1) were also formally repealed by Schedule 27 Pt 3(2). Section 832 was later repealed as a whole by the Corporation Tax Act 2010 (c.4) ("CTA 2010"), s 1181 and Sch 3 Pt 1, effective for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years. CTA 2010 Sch 3 Pt 1 also repealed *Schedule 3 paragraph 39(2), (7)* to FA 1998. *Paragraph 39* as a whole is now spent and may be repealed.
- *paragraph 40* - amended section 835 of ICTA 1988 (relating to "total income") by substituting words in subsection (6)(a), in relation to distributions made on or after 6 April 1999. Section 835 was subsequently repealed in whole by Income Tax Act 2007 (c.3) ("ITA 2007"), ss 1031, 1034 and Sch 3 Pt 1 with effect, for income tax purposes, for the tax year 2007-08 and subsequent tax years and, for corporation tax purposes, for accounting periods ending after 5 April 2007. Likewise *Schedule 3 paragraph 40* to FA 1998 was repealed in whole. **No** further repeal is required.
- *paragraph 41* - ceased the effect of Schedule 13 to ICTA 1988 (collection of ACT) in relation to return periods and accounting periods beginning on or after 6 April 1999. Schedule 13 was also repealed by Schedule 27 Pt 3(2). On that basis, *paragraph 41* is now spent and may be repealed.
- *paragraph 42* - ceased the effect of Schedule 13A to ICTA 1988 (surrenders of ACT) in relation to accounting periods of the "surrendering company" beginning on or after 6 April 1999. Schedule 13A had been inserted into ICTA 1988 by Finance Act 1996 (c.8) ("FA 1996"), s 139 and Sch 25 paras 2, 3, effective where the accounting period of the surrendering company ended on or after 1 July 1999. Given that Schedule 13A was also formally repealed by Schedule 27 Pt 3(2) to FA 1998, *Schedule 3 paragraph 42* is now spent and may be repealed.

- *paragraph 43* - amended Schedule 24 to ICTA 1988 (controlled foreign companies: assumptions) by ceasing the effect of portions of paragraph 6 and the whole of paragraph 7 in relation to accounting periods of companies resident outside the UK which began on or after 6 April 1999. Schedule 27 Pt 3(2) formally repealed these provisions. On that basis, *paragraph 43* is now spent and may be repealed.
- *paragraph 44* - amended Schedule 26 to ICTA 1988 (controlled foreign companies: tax liability relief) by ceasing the effect of paragraph 2 of that Schedule, in relation to accounting periods beginning on or after 6 April 1999, and by providing a deeming provision (*paragraph 44(4)*) relating to apportionment for a defined "straddling period". Given that the latter amendment was only a transitional provision, expiring on 5 April 1999, the whole of *paragraph 44* is now spent and may be repealed.
- *paragraph 45* - ceased the effect of Schedule 4 paragraph 8 to the Finance (No. 2) Act 1997 (c.58) ("F (No. 2) A 1997") (interpretation), which paragraph was also formally repealed by Schedule 27 Part 3(2), effective on 31 July 1998. Schedule 4 paragraph 8 had prospectively amended (from 6 April 1999) section 238(1) of ICTA 1988. Given that *paragraph 45* is now spent, it may be repealed.
- *paragraph 46* - ceased the effect of Schedule 4 paragraph 9 to F (No. 2) A 1997, which paragraph had prospectively amended section 241 of ICTA 1988 (calculation of ACT). Schedule 4 paragraph 9 was also repealed by Schedule 27 Pt 3(2) to FA 1998, as was section 241 of ICTA 1988. On the basis that *paragraph 46* is now spent, it may now be repealed.
- *paragraph 47* - ceased the effect of Schedule 4 paragraph 18 to F (No. 2) A 1997, which paragraph had prospectively amended section 703 of ICTA 1988 (cancellation of tax advantage). Schedule 4 paragraph 18 was also repealed by Schedule 27 Pt 3(2) to FA 1998. As a consequence, *paragraph 47* is now spent and may be repealed.
- *paragraph 48* - ceased the effect of Schedule 4 paragraph 23 to F (No. 2) A 1997, which paragraph had prospectively amended Schedule 13 to ICTA 1988. Schedule 4 paragraph 23 was repealed by Schedule 27 Pt 3(2) to FA 1998, as was Schedule 13 to ICTA 1988. On that basis *paragraph 48* is now spent and may be repealed.

(b) Computation of Schedule D profits

327. FA 1998, s 46(3) and *Schedule 7 paragraph 1* (which dealt with the computation of Schedule D trade or professional “profits” for the purposes of income and corporation tax)¹⁴⁷ amended section 375A(1)(b) of ICTA 1988 (amongst other sections) by substituting reference simply to “profits” in place of “profits or gains” or “profits and gains” in the text. Section 375A was repealed by Finance Act 1999 (c.16) (“FA 1999”), ss 38, 139 and Sch 4 para 10 and Sch 20 Pt 3(7) n 4, effective in relation to payments of interest made on or after 6 April 2000 and certain payments of interest made before that date. On that basis, reference to “375A(1)(b),” can be repealed from within *Schedule 7 paragraph 1*.

328. FA 1998 *Sch 7 para 1* also amended ICTA 1988, ss 568(1) and 570(1) by removing unnecessary references to “gains” in the earlier Act. FA 1998 *Sch 7 para 1* likewise amended ICTA 1988 “Schedule 21, paragraph 6(1)(b) and (3) (twice)” in the same manner by deleting references to “gains” and leaving in reference only to “profits” arising.

329. If sections 568 and 570 are now to be repealed, then the references to “568(1), 570(1),” in FA 1998 *Sch 7 para 1* should also be omitted. Section 46(3) is not affected and can stand unamended.

330. Likewise, if ICTA 1988 Schedule 21 is to be repealed in whole, then the amending reference in FA 1998 *Sch 7 para 1* to “, Schedule 21, paragraph 6(1)(b) and (3) (twice)” should also be repealed.

331. Finally, the words “770(2)(a)(iii) and (b)(iii),” in FA 1998 *Sch 7 para 1* should be repealed because section 770 of ICTA 1988 (together with sections 771 to 773) was replaced by FA 1998, s 108(1), (5), which substituted a new section 770A and Schedule 28AA. The substitution took effect for the purposes of corporation tax as respects accounting periods ending on or after 1 July 1999.¹⁴⁸ On this basis the reference to section 770 in FA 1998 is now superseded and the words quoted are no longer required.

¹⁴⁷ Income and corporation tax fell within Part 3 Chapter 1 of FA 1998 (ss 25 to 119).

¹⁴⁸ The substitution had the effect of repealing sections 770 to 773, although they were not repealed patently within the Act or subsequently.

332. *Schedule 7 paragraph 2* to FA 1998 applied the section 46(3) amendments (substituting “profits” in place of references to profits and/or gains) to the Finance Act 1988 (c.39) (“FA 1988”), s 73(2) and Sch 12 para 2(2). Section 73 dealt with the taxation of consideration received by an individual who gives an undertaking to his employer restricting the activities he may undertake. Schedule 12 paragraph 2 (and section 145) dealt with taxation where a building society transfers the whole of its business to a successor company.

333. However, FA 1988, s 73(2) was repealed by Corporation Tax Act 2009 (c.4) (“CTA 2009”), ss 1322, 1326, 1329 and Sch 1 paras 330, 334 and Sch 3 Pt 1 with effect, for corporation tax purposes, for accounting periods ending on or after 1 April 2009 and for income tax and CGT purposes for the tax year 2009-10 and subsequent tax years. Likewise, the reference to “section 73(2)” in *Schedule 7 paragraph 2* was repealed by CTA 2009, Sch 3 Pt 1. FA 1988, Sch 12 para 2 was repealed by section 141 of, and Schedule 40 Pt 3(17) to, the Finance Act 2002 (c.23) (“FA 2002”). On that basis the amendment made by *Schedule 7 paragraph 2* has been superseded, and the provision may now be repealed as a whole.

334. *Schedule 7 paragraph 3* to FA 1998 applied the section 46(3) amendments to the Finance Act 1989 (c.26) (“FA 1989”), ss 67(2)(a), 76(1), (4)(a) and 112(1), some of which provisions dealt with employee share ownership trusts. Section 76 was repealed by the Finance Act 2004 (c.12) (“FA 2004”), s 326 and Sch 42 Pt 3, effective on 6 April 2006. Section 112 was repealed by the Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”), ss 882(1), 883, 884 and Sch 1 paras 406, 410 and Sch 3, effective for income tax purposes from the year 2005-06 and, for corporation tax purposes, for accounting periods ending after 5 April 2005. On that basis, the words “, 76(1) and (4)(a) and 112(1)” may now be repealed in *Schedule 7 paragraph 3* as superseded.

335. *Schedule 7 paragraph 8* to FA 1998 applied the section 46(3) amendments to the Finance (No. 2) Act 1992 (c.48) (“F (No. 2) A 1992”), s 42(8) and Sch 12 paras 3(3)(c), 4(2) (twice). Section 42 of F (No. 2) A 1992 was repealed by the Finance Act 2006 (c.25) (“FA 2006”), ss 46, 178 and Sch 26 Pt 3(4), effective for film production expenditure and acquisition expenditure commencing on or after 1 April 2006 and for film acquisition expenditure incurred on or after 1 October 2007. Schedule 12 to F (No. 2) A 1992 was fully repealed by the Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”), ss 371, 378, 381 and Sch 7 paras 63, 65 and Sch 10 Pt 12,

effective for corporation tax purposes for accounting periods ending on or after 1 April 2010, and for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years. On that basis the amending *Schedule 7 paragraph 8* has now been superseded and may be repealed.¹⁴⁹

336. *Schedule 7 paragraph 12* to FA 1998 applied the section 46(3) amendments to the Finance Act 1997 (c.16) ("FA 1997"), Sch 12 para 8(4)(a). The whole of Schedule 12 paragraph 8 was then repealed by FA 1998, ss 38(2), (3), 165 and Sch 5 para 74 and Sch 27 Pt 3(4), effective for periods of account beginning on or after 1 April 1998. On this basis, *Schedule 7 paragraph 12* is now spent and may be repealed.

(c) Phasing-out of relief for profit-related pay

337. *FA 1998, s 62 and Schedule 11* set down transitional provisions for "profit-related pay" and, more particularly, rules to prevent the manipulation of profit periods in relation to the phasing-out of relief for such pay. Section 62 merely gave effect to Schedule 11, which Schedule set down the detailed (and complex) rules for determining the limit on profit-related pay eligible for relief under section 171(4) of ICTA 1988.

338. As originally enacted, section 171 laid down the relief from income tax for profit-related pay paid to employees in accordance with a registered scheme. Under the arrangement one-half of any profit-related pay was to be exempt from income tax, subject to conditions -

- that the profit-related pay should be paid by reference to a "profit period"
- that it be paid in accordance with a "registered scheme"
- that the pay should not exceed the lower of two limits, namely, one-fifth of the employee's pay aggregated or £3,000, and
- that the employee is not receiving exempt profit-related pay in respect of a second (concurrent) employment.

339. The provisions in ICTA 1988 giving relief (sections 169 to 184 and Schedule 8) were repealed by Finance Act 1997 (c.16) ("FA 1997"), ss 61(2),¹⁵⁰ 113 and Sch 18 Pt

¹⁴⁹ Part of Schedule 7 paragraph 8 to FA 1998 had already been repealed by the Finance Act 2002 (c.23), ss 107, 141 and Sch 40 Pt 3(18), for accounting periods beginning on or after 1 October 2002.

¹⁵⁰ The relief in section 171(4) had subsequently risen to £4,000. Section 61(1) of FA 1997 reduced that sum incrementally to £2,000 for the calendar year 1998, and to £1,000 for the calendar year 1999. Section 61(2) removed the relief entirely for profit periods from 1 January 2000 onwards, and section 61(3) ended scheme registration on 31 December 2000.

6(3), with effect in relation to any payment made by reference to a profit period beginning on or after 1 January 2000.

340. The legislative purpose behind FA 1998, s 62 and Sch 11 was to ensure that the section 171 cap on profit-related pay eligible for relief was not exploited by manipulation of the profit periods relevant to relief in the final years for which relief was available. In particular, Schedule 11 covered the situation where an employee was awarded under a different registered scheme run by the employer (or a connected person) rather than under the scheme that ordinarily would have applied.

341. Schedule 11 paragraph 1(2), (3) set down the time limits for application of the Schedule namely, in the case of an employee, where the “relevant period” began on or after 17 March 1998 and ended before 31 December 2000.

342. HMRC are of the opinion that, because the tax charge was on a receipts basis rather than an earnings basis, and because Schedule 11 is concerned only with the determination of the amount eligible for relief in any particular period of a “registered scheme”, the Schedule ceased to have application on the determination of the relievable amount for the last period of the registered scheme ending on or before 31 December 2000 (in the tax year 2000-01). On that basis, *section 62* and *Schedule 11* are spent and can be repealed.

(d) Double taxation relief: restrictions

343. *FA 1998, ss 103 to 107* dealt with double taxation relief, and amended various provisions in *ICTA 1988*.

344. *Sections 103 to 105* substituted section 798 of *ICTA 1988* (restriction of relief on certain interest and dividends) and inserted new sections 798A (adjustments of interest and dividends for spared and non-spared tax) and 798B (meaning of ‘financial expenditure’). These amendments took effect in relation to foreign interest and foreign dividends paid on or after 17 March 1998 (although not for such payments made before 1 January 1999 in pursuance of arrangements which started before 17 March 1998 and continued unaltered).¹⁵¹

¹⁵¹ See FA 1998, s 103(2), (3).

345. Sections 798 to 798B were substituted (with the addition of a new section 798C) by Finance Act 2005 (c.7) ("FA 2005"), s 86(1), (3)(a), (4), (5) with effect, for the purposes of corporation tax, in relation to a credit for foreign tax which relates to a payment of foreign tax on or after 16 March 2005 or income received on or after that date in respect of which foreign tax has been deducted at source. However, the original amendments made by *FA 1998, ss 103 to 105* were not repealed, although they are spent. The sections can now be repealed.

346. *Section 106* amended section 803 of ICTA 1988 so as to clarify the provisions on underlying tax reflecting interest or dividends on loans. *Section 106(4)-(9)* amended section 803(4)-(9), effective where the overseas dividend was paid on or after 17 March 1998 (but not where it was paid before 1 January 1999 pursuant to arrangements made pre-17 March 1998).

347. Section 803(4)-(9) of ICTA 1988 was repealed by FA 2005, s 104 and Sch 11 Pt 2(8), in accordance with section 86 of that Act (see above). However, the amending provision in *FA 1998, s 106(4)-(9)* was not, nor has it been since. It is now spent and can be repealed.

(e) Reduction and abolition of gas levy

348. *FA 1998, s 153* provided for the incremental reduction (to nil) of the gas levy chargeable under the Gas Levy Act 1981 (c.3). The charge was on gas supplied or won by the pre-privatisation British Gas Corporation (BGC). The levy was designed to recover for the Exchequer some of the profits which had accrued to BGC from the increasing value of gas purchased by BGC under petroleum revenue tax exempt contracts and at prices which lagged behind the rise in oil prices. The levy was payable by BGC on gas purchased under contracts made before 30 June 1975.

349. The Gas Levy Act 1981 was amended by the Gas Act 1986 (c.44) which effected privatisation of British Gas and extended application of the levy to British Gas Trading and to other gas producing companies. The 1981 Act was subsequently repealed in whole by FA 1998, s 165 and Sch 27 Pt 5(3) and n 1, with effect from 31 July 1998. The repeal did not have effect in relation to the gas levy for the year 1997-98 or any previous year.

350. Section 153(1) of FA 1998 reduced the gas levy for the year 1997-98 (to 3p per therm), and section 153(2) abolished the levy for the year 1998-99 and subsequent

years. Section 153(4) provided that any repayment of overpaid gas levy would be made by the Secretary of State from the Consolidated Fund (and carrying interest at the prescribed rate from 31 July 1998 until payment).

351. The purposes underpinning abolition of the levy were to rectify distortion of the market, and to ensure that consumers benefited through lower energy prices. HMRC are of the view that the possibility of repayment claims being in train now is remote and that, in any event, interest was fixed to the rate applicable for repayments for the year 1997-98.

352. On this basis, *section 153* as a whole is now spent and can be repealed.

Finance Act 1999

(a) Employee benefits

353. *Section 46 of the Finance Act 1999 (c.16)* (“FA 1999”) dealt with profit-related pay (PRP) schemes and agricultural pay. The section removed the requirement for a PRP scheme to satisfy the minimum wage legislation in relation to scheme registration applications (provision of undertaking under section 175(1)(c) of ICTA 1988) made on or after 28 July 1998, and in relation to failures to comply taking place on or after that date. It also omitted and repealed section 178(1)(d) of ICTA 1988 (in conjunction with section 139 and Schedule 20 Pt 3(10)). Profit-related pay was dealt with generally in Part 5 Chapter 3 of ICTA 1988 (that is to say, sections 169 to 184).

354. Part 5 Chapter 3 (together with Schedule 8 to ICTA 1988) was subsequently repealed by Finance Act 1997 (c.16) (“FA 1997”), ss 61(2), 113 and Sch 18 Pt 6(3) in relation to any payment made by reference to a profit period beginning on or after 1 January 2000 (and no PRP scheme was to be registered beyond 31 December 2000).

355. As a consequence of the repeal, the provisions in *Section 46* of FA 1999 are now unnecessary and are spent.

(b) Withdrawal of relief for interest on loans to buy land

356. Section 38 of FA 1999 withdrew tax relief on mortgage interest payments made or due on or after 6 April 2000. Section 38(8) gave effect to *Schedule 4* to the Act which contained amendments consequential on the preceding provisions of the section.

- *Schedule 4 paragraph 2* ceased the effect of sections 354 to 358 of ICTA 1988 (loans to buy land), and section 139 and Schedule 20 Pt 3(7) formally repealed the provisions. As a consequence, *paragraph 2* is spent and may now be repealed.
- *Paragraph 3(2)* omitted section 367(1) of ICTA 1988 and words in section 367(2), which were also repealed by Schedule 20 Pt 3(7). *Paragraph 3(2)* is now spent and may be repealed.
- *Paragraph 5(2)(b), (3), (4)* omitted the whole or part of subsections in section 370 of ICTA 1988, which provisions were also repealed by Schedule 20 Pt 3(7) to FA 1999. On that basis, *paragraph 5(2)(b), (3), (4)* is now spent and may be repealed.
- *Paragraph 6* ceased the effect of section 372 of ICTA 1988 (home improvement loans), which was also repealed by Schedule 20 Pt 3(7). *Paragraph 6* is now spent and may be repealed.
- *Paragraph 7(2)* omitted from section 373 of ICTA 1988 various subsections and words within subsections. Those omitted provisions were also repealed by Schedule 20 Pt 3(7). *Paragraph 7(2)* is now spent and may be repealed.
- *Paragraph 8* omitted section 374(1)(c) of ICTA 1988 and words within section 374(2). Those provisions were also formally repealed by Schedule 20 Pt 3(7). Consequently, *paragraph 8* may now be repealed as spent.
- *Paragraph 9(2)* omitted section 375(9), (10) of ICTA 1988 (loan interest), which was also repealed by Schedule 20 Pt 3(7). *Paragraph 9(2)* is now spent and may be repealed. As a consequence of that repeal, *paragraph 18(1)* - which relates to commencement of *paragraph 9(2)*, and also becomes unnecessary - can likewise be repealed now.
- *Paragraph 10* ceased the effect of section 375A of ICTA 1988 (which had been inserted by Finance Act 1995 (c.4), s 39(3), Sch 6 para 18), which provision was also repealed by Schedule 20 Pt 3(7). On that basis, *paragraph 10* is spent and may be repealed.
- *Paragraph 11* omitted section 376(6) of ICTA 1988 and words from section 376(3). These provisions were also formally repealed by Schedule 20 Pt 3(7). *Paragraph 11* may now be repealed as spent.
- *Paragraph 12* ceased the effect of section 377 of ICTA 1988, which section was also repealed by Schedule 20 Pt 3(7). *Paragraph 12* is now spent and may be repealed.

- *Paragraph 13(a)* omitted from section 378 of ICTA 1988 subsections (1), (2) and (4), which provisions were also repealed by Schedule 20 Pt 3(7). The remaining parts of section 378 remain in being. *Paragraph 13(a)* is thus spent and may be repealed. The substitution in *paragraph 13(b)* is still live, and should **not** be repealed.
- *Paragraph 14(a) and (b)* omitted words from section 379 of ICTA 1988 (interpretation and definitions), which words were also repealed by Schedule 20 Pt 3(7). *Paragraph 14(a) and (b)* may now be repealed as spent. *Paragraph 14(c)* inserted a new definition into the section, and that part of the paragraph **cannot** be repealed as it is still live.
- *Paragraph 15* amended section 488 of ICTA 1988 (tax liability of co-operative housing associations) by substitutions and omissions of various provisions. *Paragraph 15(2)(b), (3), (4) and (6)* contained the omissions, which omitted provisions were also formally repealed by Schedule 20 Pt 3(7) and n2. By paragraph 18(2) *paragraph 15* had effect in relation to any claim for 2000-01 or any subsequent year of assessment. *Paragraph 15(2)(b), (3), (4) and (6)* are all spent and may now be repealed.
- *Paragraph 16* effected an amendment of section 548(3)(a) of ICTA 1988 by substitution. Section 548 (investment life insurance contracts) was later repealed by the Finance Act 2008 (c.9) ("FA 2008"), s 36 and Sch 14 paras 1, 3 and 18 with effect, so far as relating to corporation tax, for accounting periods beginning on or after 1 April 2008, and for income tax, for the tax year 2008-09 and subsequent tax years.¹⁵² On that basis the amending *paragraph 16* is spent and may be repealed.
- *Paragraph 17* amended section 222 of the Taxation of Chargeable Gains Act 1992 (c.12) ("TCGA 1992") (private residence disposal relief) by omissions, insertions and substitutions. *Paragraph 17(2)* omitted words within subsection (8)(a), which words were also repealed by Schedule 20 Pt 3(7) and n3 (effective, by paragraph 18(4), for the year 2000-01 and subsequent years of assessment). On that basis, *paragraph 17(2)* is now spent and may be repealed.
- *Paragraph 18(1)* (commencement) is spent (see above under *paragraph 9(2)*) and may also be repealed.

¹⁵² The FA 2008 did not contain a separate repeals schedule.

Finance Act 2000

(a) Donations to charity: payroll deduction scheme

357. *Section 38 of the Finance Act 2000 (c.17)* (“FA 2000”) modified the existing payroll deduction scheme (through which employees could make voluntary charitable donations) so that sums deducted at source and paid to a charity under an “approved” scheme by the employer through a non-charitable agent were to attract a 10% supplement payable by the agent.

358. The provision had a limited life span. By section 38(6) the substantive parts of the section (subsections (1) to (4)) were to have effect in relation to supplements or other amounts payable in respect of sums withheld on or after 6 April 2000 but before 6 April 2004.¹⁵³ No claims by agents for certain reimbursements under the subsection (2) machinery were to be entertained if made on or after 6 April 2005.¹⁵⁴

359. Section 38(5), (7) was repealed by the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”), ss 723, 724(1) and Sch 8 Pt 1, with effect for the purposes of income tax from the tax year 2003-04, and for the purposes of corporation tax for accounting periods ending after 5 April 2003.

360. The remaining subsections within section 38 are spent, and the whole of *section 38* may now be repealed.

361. *Section 38* had been amended previously as follows:

- Section 38(1) was amended (by textual substitution) by ITEPA 2003, ss 722, 723 and Sch 6 paras 242, 243(1),(2)(a)-(d), with effect for the purposes of income tax from the tax year 2003-04, and for the purposes of corporation tax for accounting periods ending after 5 April 2003. As a consequence of the recommended repeal of section 38, *Schedule 6 paragraph 243(2) to ITEPA 2003* should also now be repealed.
- Section 38(4) was amended (by textual substitution) by ITEPA 2003, ss 722, 723 and Sch 6 paras 242, 243(1), (3), with effect from the same dates. As a consequence of the recommended repeal of section 38, *Schedule 6 paragraph 243(1), (3) to ITEPA 2003* should also now be repealed.¹⁵⁵

¹⁵³ The original cut-off date was 6 April 2003, but the later date (by 5 April 2004) was substituted by the Finance Act 2003 (c.14) (“FA 2003”), s 146.

¹⁵⁴ Likewise, the original date was 6 April 2004, but the time limit was extended by the FA 2003.

¹⁵⁵ These two recommendations taken together mean that the whole of *Schedule 6 paragraph 243* should now be repealed.

- Section 38(4) was also amended by Income Tax Act 2007 (c.3) (“ITA 2007”), s 1027 and Sch 1 para 390 (which substituted reference to ICTA 1988 in the definition of “charity”). As a consequence of the recommended repeal of section 38, *Schedule 1 paragraph 390 to ITA 2007* should now be repealed.
- Section 38(6) was amended by FA 2003, s 146. The purpose of the amendment was - in the context of payroll giving - to extend the 10% supplement (see above) to 5 April 2004. As a consequence of the recommended repeal of section 38, *section 146 of FA 2003* should also be repealed.

362. Section 38 applied to schemes “approved” by the Board under section 202 of ICTA 1988, and which complied with the Charitable Deductions (Approved Schemes) Regulations 1986 (SI 1986 No. 2211). By regulation 16 of those Regulations, which was not in the original version but was added in 2000 (and amended in 2003),¹⁵⁶ provision was made in these terms -

“Where the Board have made an overpayment under section 38 of the Finance Act 2000 to an approved agent, the amount of that overpayment may be assessed and recovered as if it were an amount of unpaid tax for the purposes of the Taxes Acts.”

363. As a consequence of the recommended repeal of section 38 (above), the following regulations should also be revoked as spent:

- The Charitable Deductions (Approved Schemes) Regulations 1986 (SI 1986 No. 2211), reg 16
- The Charitable Deductions (Approved Schemes) (Amendment No. 2) Regulations 2000 (SI 2000 No. 2083), reg 8
- The Charitable Deductions (Approved Schemes) (Amendment) Regulations 2003 (SI 2003 No. 1745), reg 7.

(b) Double taxation relief

364. Section 103 of, and Schedule 30 to, FA 2000 set out a range of amending provisions on double taxation relief. *Schedule 30 paragraph 4* dealt more specifically

¹⁵⁶ Inserted by the Charitable Deductions (Approved Schemes) (Amendment No. 2) Regulations 2000 (SI 2000 No. 2083), reg 8. These Regulations had effect in relation to supplements payable in respect of sums withheld by employers on or after 6 April 2000 and before 6 April 2003. The text of the new regulation 16 was amended slightly (by substitution) by the Charitable Deductions (Approved Schemes) (Amendment) Regulations 2003 (SI 2003 No. 1745), reg 7. The 2003 Regulations made consequential amendments in respect of sums withheld during the period 6 April 2003 to 5 April 2004.

with relief for persons resident outside the UK who have branches or agencies within the UK.

365. *Schedule 30 paragraph 4(1) to (12) inclusive* amended ICTA 1988, ss 790, 794, 801 and 801A. Those sections and *Schedule 30 paragraph 4(1) to (12) inclusive* were repealed by the Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”), s 378 and Sch 10 Pt 1, with effect for corporation tax purposes for accounting periods ending on or after 1 April 2010, and for income tax and capital gains tax purposes, for the tax year 2010-11 and subsequent tax years.

366. *Schedule 30 paragraph 4(13)* amended Schedule 19AC paragraph 13 to ICTA 1988 (which itself notionally amended section 794 of the Act). Schedule 19AC to ICTA 1988 was repealed by the Overseas Life Insurance Companies Regulations 2006 (SI 2006 No. 3271), reg 43 and Sch Pt 1, with effect from 31 December 2006. Similarly, section 794 was repealed subsequently by TIOPA 2010 (see above). *Schedule 30 paragraph 4(13)* can now be repealed.

367. The remaining portion of *Schedule 30 paragraph 4* is sub-paragraph (14), which provided that the amendments made by the paragraph as a whole were to have effect in relation to accounting periods ending on or after 21 March 2000. Given the repeal and recommended repeal of the preceding provisions, the sub-paragraph becomes spent. On that basis *Schedule 30 paragraph 4(14)* should also be repealed.

368. *Schedule 30 paragraphs 10, 14 and 26* each repealed provisions in ICTA 1988 (together with section 156 and Schedule 40 Pt 2(13)), as follows -

- *Schedule 30 paragraph 10* provided that section 800 of ICTA 1988 (relating to dividends paid between related companies but not covered by arrangements) was to cease to have effect in connection with dividends paid on or after 1 April 2000
- *Schedule 30 paragraph 14* provided that section 802 of ICTA 1988 (relating to UK insurance companies trading overseas) was to cease to have effect in relation to accounting periods beginning on or after 1 April 2000
- *Schedule 30 paragraph 26* provided that section 810 of ICTA 1988 (relating to postponement of capital allowances to obtain double taxation

relief) was to cease to have effect in relation to claims made on or after 1 April 2000.

Each of these provisions in the *FA 2000* is now spent and can be repealed.

(c) Insurance companies: allocation of expenses in Schedule D Case I computations

369. *Schedule 30 paragraph 18 to FA 2000* inserted new sections 804C to 804E into ICTA 1988, which related to allocation of expenses in computations under Schedule D Case I for insurance companies where foreign tax credit is allowable. The new provisions had effect in relation to periods of accounting beginning on or after 1 April 2000.¹⁵⁷

370. *Schedule 30 paragraph 18(1)* was repealed by section 378 of, and Schedule 10 Pt 1 to, TIOPA 2010, effective for corporation tax purposes for accounting periods ending on or after 1 April 2010, and for income tax and capital gains tax purposes for the tax year 2010-11 and subsequent tax years.

371. *Schedule 30 paragraph 18(2)* contained an amendment (by omission of text) to Finance Act 1989 (c.26) ("FA 1989"), s 82(1)(a) which was consequential upon the new provision inserted as section 804C(11). Subsequently, however, section 170 of, and Schedule 33 paragraph 1 to, the Finance Act 2003 (c.14) ("FA 2003") substituted new sections 82 to 82B into FA 1989, so that the amendment to section 82 by the FA 2000 was superseded. *Schedule 30 paragraph 18(2)* can therefore now be repealed.

372. *Schedule 30 paragraph 18(3)* made further consequential amendment to ICTA 1988, ss 436(3)(a), 439B(3)(a) and 441(4)(a). That amending provision was repealed, however, by section 216 of, and Schedule 43 Pt 3(12) and n1 to, FA 2003, effective for periods of account beginning on or after 1 January 2003.

373. *Schedule 30 paragraph 18(4)* contained the commencement provision for the paragraph as a whole.

374. On the basis that *Schedule 30 paragraph 18(2)* is recommended for repeal (and as a consequence *paragraph 18(4)* also) the whole of *Schedule 30 paragraph 18 to FA 2000* may now be repealed.

¹⁵⁷ The insertions were made by *Schedule 30 paragraph 18(1)*, and the operative date was set by *paragraph 18(4)*.

Capital Allowances Act 2001

375. The Capital Allowances Act 2001 (c.2) (“CAA 2001”), *section 542* fell within Part 11 Chapter 2 of the Act dealing with contribution allowances¹⁵⁸ and, in particular, where C contributes a capital sum towards expenditure on provision of an asset, and R (another, but not “connected”, person) would ordinarily have been regarded as wholly incurring the expenditure on the asset. By *section 542* writing-down allowances were to be available to the transferee R (subject to certain conditions) where a contribution was made by C and then C’s trade or “relevant activity” was transferred.

376. *Section 542* related to contribution allowances under Parts 3 to 5 of the Act only. Parts 3 (sections 271 to 360) and 4 (sections 361 to 393) of CAA 2001, together with sections 539 and 540, were subsequently repealed by the Finance Act 2008 (c.9) (“FA 2008”), s 84 and Sch 27 paras 1, 9 and 10, which also abolished the industrial buildings and agricultural buildings allowances, effective for chargeable periods beginning on or after 1 April 2011 (for corporation tax purposes) and 6 April 2011 (for income tax purposes). Part 5 (sections 394 to 436) of CAA 2001 was left in place by the FA 2008, together with section 541, but section 542(1) was amended to make clear that it now referred only to Part 5 of the Act.

377. *Section 542* in four places refers to C’s “trade or relevant activity”. However, once Parts 3 and 4 had been repealed the notion of “relevant activity” had also become redundant.¹⁵⁹ It did not feature in the remaining Part 5 or in section 541 (relating to mineral extraction allowances) which spoke simply of “a trade” carried on or to be carried on. As a consequence, the words “or relevant activity” in *section 542* have become superfluous and should now be repealed.

378. CAA 2001, s 578 and *Schedule 2 paragraph 65* made consequential amendments to ICTA 1988 Sch 21 para 6(1)(a). Schedule 21 dealt with tax relief for schemes for rationalising industry and other redundancy schemes. The amendment involved substituting reference to parts of the CAA 2001 in place of reference to parts of the predecessor Capital Allowances Act 1990 (c.1).

¹⁵⁸ Contribution allowances covered plant and machinery (section 538, referring to Part 2 of the Act), industrial buildings (section 539, referring to Part 3 of the Act), agricultural buildings (section 540, referring to Part 4 of the Act), and mineral extraction (section 541, referring to Part 5 of the Act).

¹⁵⁹ Moreover, reference to Parts 3 and 4 were deleted from section 542(1) by FA 2008, Sch 27 para 11 which simply left in place (by substitution) reference to Part 5 of the CAA 2001.

379. If ICTA 1988 Sch 21 were to be repealed as a whole (as proposed above), then the amending provision in *Schedule 2 paragraph 65 to the CAA 2001* should also be repealed. There is no need to repeal section 578 which simply activates the raft of Schedule 2 consequential amendments.¹⁶⁰

Finance Act 2001

380. *Section 81* of, and *Schedule 27* to, the Finance Act 2001 (c.9) ("FA 2001") provided for double taxation relief where income is subject to foreign tax. *Schedule 27* comprised 7 paragraphs, as follows:

- *paragraph 1* - amended section 795 of ICTA 1988. That section in ICTA and *paragraph 1* were both repealed by the Taxation (International and Other Provisions) Act 2010 (c.8) ("TIOPA 2010"), ss 378, 381 and Sch 10 Pt 1, with effect for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years.
- *paragraph 2* - amended section 799 of ICTA 1988. That section and *paragraph 2* were both repealed by TIOPA 2010, ss 378, 381 and Sch 10 Pt 1 (as above).
- *paragraph 3* - amended section 801 of ICTA 1988 (relief where dividends paid between related companies). That section was repealed by TIOPA 2010, ss 378, 381 and Sch 10 Pt 1 (as above). *Paragraph 3* was repealed previously by Finance Act 2005 (c.7) ("FA 2005"), ss 91(8), 104(1) and Sch 11 Pt 2(9).
- *paragraph 4* - amended section 806A of ICTA 1988 (which section, dealing with eligible unrelieved foreign tax, had been inserted by the Finance Act 2000 (c.17) ("FA 2000"), s 103 and Sch 30 para 21). Section 806A was repealed by the Finance Act 2009 (c.10) ("FA 2009"), s 34 and Sch 14 paras 2, 9, 31, with effect in relation to distributions paid on or after 1 July 2009. *Paragraph 4* was omitted at the same time by FA 2009, s 34 and Sch 14 paras 30(c), 31 as a consequential repeal.
- *paragraph 5* - amended section 806B of ICTA 1988 (which section had been inserted by FA 2000, s 103 and Sch 30 para 21). Section 806B and *paragraph 5* were both repealed by FA 2009, s 34 and Sch 14 paras 2, 9, 30(c) and 31 (as above).

¹⁶⁰ Later statutory amendments to the CAA 2001 did not affect Schedule 2 paragraph 65, and consequently no further partial repeals are required.

- *paragraph 6* - amended section 811(2) of ICTA 1988. Section 811 as a whole and *paragraph 6* were both repealed by TIOPA 2010, ss 378, 381 and Sch 10 Pt 1 (as above).
- *paragraph 7* - amended Schedule 30 paragraph 4 to the Finance Act 2000 (c.17) ("FA 2000") by providing that the coming into effect of the amendments in that paragraph - as originally provided for in paragraph 4(14) - were to relate to "chargeable periods" rather than "accounting periods" ending on or after 21 March 2000. Schedule 30 paragraph 4(1) to (12) to FA 2000 was repealed by TIOPA 2010, ss 378, 381 and Sch 10 Pt 1 (as above), leaving in place only paragraph 4(13) and (14).
- Schedule 30 paragraph 4(13) amended Schedule 19AC paragraph 13 to ICTA 1988 by textual omissions and insertions. Schedule 19AC had been inserted into ICTA 1988 by the Finance Act 1993 (c.34) ("FA 1993"), s 97(2) and Sch 9 para 1, and was later repealed by the Overseas Life Insurance Companies Regulations 2006 (SI 2006 No 3271), reg 43 and Sch Pt 1 (see above under FA 2000 entry). The amending *Schedule 30 paragraph 4(13) to FA 2000* has not yet been repealed, but repeal is recommended earlier in this note. Similarly, *Schedule 30 paragraph 4(14)* has been recommended for repeal.
- If these two repeals were to be enacted, the whole of Schedule 30 paragraph 4 to FA 2000 would then be repealed. As a consequence there would be no further need for *Schedule 27 paragraph 7 to FA 2001* because the amendment in that paragraph would be spent. *Schedule 27 paragraph 7* could therefore also be repealed.
- Once *Schedule 27 paragraph 7* has been repealed the whole of *Schedule 27* will cease to exist and, as a consequence, *section 81* (which simply gave effect to *Schedule 27*) can likewise be repealed.

Finance Act 2002

381. As a consequence of the repeal of section 812 of ICTA 1988 recommended above, the words "812(2)," in *section 88(2)(a)* of the Finance Act 2002 (c.23) ("FA 2002") - which provision amended section 812 - should likewise now be repealed.

Income Tax (Earnings and Pensions) Act 2003

382. As a consequence of the repeal of section 38 of FA 2000 recommended above, the amending provisions in *Schedule 6 paragraph 243* to the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA 2003”) should also now be repealed.

Finance Act 2003

383. As a consequence of the repeal of section 38 of FA 2000 recommended above, the amending provision in *section 146* of the Finance Act 2003 (c.14) (“FA 2003”) should also now be repealed.

384. Similarly, as a consequence of the repeal of section 814 of ICTA 1988 recommended above, the words “, 814(1)” in *section 153(2)(a)* of FA 2003 - which provision amended section 814 - should also be repealed.

Finance Act 2004

385. Part 4 Chapter 7 (sections 250 to 274) of the Finance Act 2004 (c.12) (“FA 2004”) deals with taxation of pension schemes and, more particularly, compliance arrangements. Section 254 requires a scheme administrator of a “registered pension scheme” to make quarterly returns to the Revenue of the income tax to which the scheme administrator is liable under Part 4. Section 260 deals with failure by an administrator to make a return or a proper return. *Section 260(6)* provides that an administrator shall be liable to a penalty where any incorrect return is made “fraudulently or negligently”. And *section 260(7)* provides that where registration has been withdrawn, references to the scheme administrator in the section are to be construed as including a person who was previously such an administrator.

386. Section 97 of, and Schedule 24 to, the Finance Act 2007 (c.11) (“FA 2007”) set out a new penalty regime for errors in returns or documents sent to the Revenue. Schedule 24 paragraph 1 listed kinds of document in a Table in that paragraph. The Table was later amended to include specifically, in the context of income tax, a return made under section 254 of FA 2004.¹⁶¹

[Note: Although Schedule 24 to the FA 2007 is, in many respects, similar to, and supersedes, section 260(6) of FA 2004, the repeal of section 260(6) is essentially a policy matter and arguably should not be dealt with via an SLR Bill because the provision cannot be said to be entirely superseded and thus obsolete.

¹⁶¹ See Finance Act 2008 (c.9) (“FA 2008”), s 122 and Sch 40 paras 1, 2(1), (4) amending the Table in Schedule 24 to FA 2007. This amendment took effect in accordance with SI 2009 No. 571.

Schedule 24 gives rise to liability to a penalty where the inaccuracy in the return or document is “careless or deliberate”, which is not exactly on all fours with section 260.

Repeal may also give rise to a transitional problem for enforcement. HMRC are considering this issue further and will provide reasons as to why this repeal should proceed now]

Income Tax (Trading and Other Income) Act 2005

387. The Income Tax (Trading and Other Income) Act 2005 (c.5) (“ITTOIA 2005”), section 882(1) and *Schedule 1 paragraphs 1, 310* amended section 774(1) of ICTA 1988 by insertion and substitution of text. Earlier in this note section 774 is recommended for repeal. If section 774 is repealed, then *Schedule 1 paragraph 310* should also be repealed.

388. ITTOIA 2005, *Schedule 1 paragraph 326* amended section 812(1) of ICTA 1988 by substituting text. Earlier in this note section 812 is recommended for repeal. If section 812 is repealed, then *Schedule 1 paragraph 326* should be repealed as well.

389. ITTOIA 2005, *Schedule 1* also amended the Finance (No. 2) Act 1992 (c.48) (“F (No. 2) A 1992”). *Schedule 1 paragraph 457(3)* amended section 41(6) of the 1992 Act by substitution of text. Subsequently section 41 was repealed by the Finance Act 2006 (c.25) (“FA 2006”), ss 46(2), 178 and Sch 26 Pt 3(4) (see earlier discussion). On that basis, the amending *Schedule 1 paragraph 457(3)* should also now be repealed. Because *paragraph 457* amended section 41, and that section as a whole has now been repealed, *Schedule 1 paragraph 457* as a whole can also be repealed.

390. ITTOIA 2005, *Schedule 1 paragraph 458(4)* amended section 42(6) of F (No. 2) A 1992 by substitution of text. Subsequently, section 42 was repealed by FA 2006, ss 46(3), 178 and Sch 26 Pt 3(4) (as set out earlier in this note). As a consequence the amending *Schedule 1 paragraph 458(4)* should now be repealed. Because section 42 as a whole has been repealed it would now be safe to repeal the whole of *Schedule 1 paragraph 458*.

Income Tax Act 2007

(a) Tax reductions for married couples and civil partners

391. The Income Tax Act 2007 (c.3) (“ITA 2007”), s 45 dealt with tax reductions for married couples and, more particularly, the married couple’s allowance available to the husband where the marriage took place before 5 December 2005 and one of the parties to the marriage was born before 6 April 1935.

392. Section 45(3) specified the base amount from which the 10% tax reduction was to be calculated, namely -

- “(a) £6,135, if either the man or his wife is aged 75 or over at some time in the tax year, and
- (b) £6,065, in any other case”.

393. Any individual born before 6 April 1935 would have reached the age of 75 by 6 April 2010. On that basis, for the tax years 2010-11 and subsequently only the higher base amount specified in section 45(3)(a) will apply, and the lower limit set out in section 45(3)(b) will no longer be applicable. *Section 45(3)(b)* is therefore now spent and can be repealed.

394. Section 46 of ITA 2007 dealt with tax reductions in respect of marriages and civil partnerships taking place on or after 5 December 2005 (and again where one spouse or civil partner - this time irrespective of gender - was born before 6 April 1935).

395. Section 46(3) was cast in similar terms to section 45(3), namely paragraph (a) set out the base amount of £6,135 for where one party is aged 75 or over, and paragraph (b) set out the amount of £6,065 for “any other case”. As with section 45(3) so too *section 46(3)(b)* is now spent and may be repealed.

396. As a consequence of these two recommended repeals, references to the provisions within ITA 2007 should also be repealed now, as follows -

- in *section 45(1)* delete, at the end of the subsection, the words “or (b) (as applicable)”
- in *section 46(1)* delete, at the end of the subsection, the words “or (b) (as applicable)”
- in *section 47(4)* (dealing with an individual’s election to transfer relief), the words in paragraph (a) “or (b) (as applicable)” and in paragraph (b) “or (b) (as applicable)”
- in *section 48(4)* (dealing with a joint election to transfer relief), the words in paragraph (a) “or (b) (as applicable)” and in paragraph (b) “or (b) (as applicable)”
- in *section 57(1)* (dealing with indexation of allowances), the words in paragraph (f) “and (b)” (referring to section 45(3)(b)), and in paragraph (g) “and (b)” (referring to section 46(3)(b))
- in *section 57(3)*, the words in paragraph (b) “and (b)” twice.

(b) Manufactured dividends on UK shares

397. The Income Tax Act 2007 (c.3) (“ITA 2007”), s 577 requires a person who pays another person a “manufactured dividend” (which is representative of a dividend on UK shares), as mentioned in section 573(1), to give the recipient concurrently a written statement setting out certain details which may be relevant for tax purposes. It applies only if the payer is not within the charge to corporation tax.

398. Section 577(8) operates as a signpost for “provisions corresponding” to those in the section for the situation where the payer *is* a UK resident company within the charge to corporation tax. The statute directs the reader to, amongst other provisions, section 234A of ICTA 1988 (by virtue of Schedule 23A paragraph 2(2)(b) to that Act) if the payer is a UK resident company: see *section 577(8)(a)*.

399. Section 234A was inserted into ICTA 1988 by the Finance (No. 2) Act 1992 (c.48) (“F (No. 2) A 1992”), s 32(1), (4), in relation to distributions begun after 16 July 1992. Section 234A made further provision for the providing of information relating to company distributions.

400. Schedule 23A (along with section 736A) was inserted into ICTA 1988 by the Finance Act 1991 (c.31) (“FA 1991”), s 58 and Sch 13 para 1. Paragraph 2(2) of Schedule 23A was later substituted by the Finance Act 1998 (c.36) (“FA 1998”), s 102(5), (10), having effect in relation to manufactured dividends paid (or treated as paid) for the purposes of Schedule 23A on or after 6 April 1999. The new paragraph 2(2) read -

“(2) Where a manufactured dividend is paid by a dividend manufacturer who is a company resident in the United Kingdom, the Tax Acts¹⁶² shall have effect -
(a) in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend on the UK equities in question; and
(b) in relation to the dividend manufacturer, as if the amount paid were a dividend of his.”

The words “as if the amount paid were” in paragraph 2(2)(b) in effect refer back to the provisions in section 234A of ICTA 1988 (inserted in 1992), and then are carried forward specifically by *section 577(8)(a)* of ITA 2007.

¹⁶² Reference to “the Tax Acts” later became reference to “the Corporation Tax Acts”: Income Tax Act 2007, ss 1027, 1034 and Sch 1 paras 1, 238(1), (3)(a).

401. However, the assumption upon which *section 577(8)(a)* was based was undermined when two separate repeals occurred:

- (i) paragraph 2(2)(b) of Schedule 23A to ICTA 1988 was repealed by Finance Act 2009 (c.10) (“FA 2009”), s 34 and Sch 14 paras 2, 11(3) and 31, effective in relation to distributions paid on or after 1 July 2009
- (ii) section 234A of ICTA 1988 was omitted by Corporation Tax Act 2010 (c.4), s 1177 and Sch 1 para 21 and repealed by s 1181(1) and Sch 3 Pt 1, effective (under section 1184(1)) for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent tax years.

402. On that basis, references to both section 234A and to Schedule 23A paragraph 2(2)(b) within *section 577(8)(a) of ITA 2007* are now otiose, and the paragraph as a whole should be repealed.

Corporation Tax Act 2009

403. The Corporation Tax Act 2009 (c.4) (“CTA 2009”) was an Act to restate, with minor changes, certain enactments relating to corporation tax. Section 1322 of, and *Schedule 1 paragraph 225* to, CTA 2009 amended section 774(1) of ICTA 1988 by substitution of text (discussed earlier in this note). Section 774 is a tax anti-avoidance provision relating to transactions between dealing and associated non-dealing companies. It has been superseded by TCGA 1992, ss 161 and 173, and CTA 2009, Parts 5 to 7. On that basis, *Schedule 1 paragraph 225* may now be repealed.

Corporation Tax Act 2010

404. As indicated earlier in this note, sections 812 to 814 of ICTA 1988 are recommended for repeal. Those provisions dealt with double taxation relief and, more particularly, the withdrawal of tax credit for certain non-resident companies connected with unitary states. The provisions have been subject to various amendments down the years.

405. The last amendment made to section 812(5) was effected by section 1177 of, and *Schedule 1 paragraph 116* to, the Corporation Tax Act 2010 (c.4) (“CTA 2010”), effective for corporation tax purposes for accounting periods ending on or after 1 April 2010 and, for income tax and CGT purposes, for the tax year 2010-11 and subsequent

tax years.¹⁶³ *Schedule 1 paragraph 116* can also now be omitted as a consequential repeal.

Taxation (International and Other Provisions) Act 2010

406. Section 374 of, and *Schedule 8 paragraphs 30, 31* to, the Taxation (International and Other Provisions) Act 2010 (c.8) (“TIOPA 2010”) amended sections 812(1)(b) and 814(1)(a) of ICTA 1988, as discussed previously in this note.¹⁶⁴

407. As a consequence of the proposed repeal of sections 812 to 814 of ICTA 1988 the amending provisions in *Schedule 8 paragraphs 30 and 31* to TIOPA 2010 can likewise be repealed.

Extent

408. The Acts identified in this note for repeal (in whole or in part) extend unconditionally across the United Kingdom, with the following exceptions:

- Income Tax Act 1952 (c.10) - whole of the UK, with special provisions for Northern Ireland
- Provisional Collection of Taxes Act 1968 (c.2) - whole of the UK, with a saving as respects Northern Ireland
- Finance Act 1969 (c.32) - whole of the UK, with a saving for Northern Ireland
- Finance Act 1973 (c.51) - whole of the UK, with a saving for Northern Ireland
- National Insurance Surcharge Act 1976 (c.85) - whole of the UK, with modifications for Northern Ireland

Consultation

409. H. M. Treasury, H. M. Revenue and Customs, the Office of Tax Simplification, the Department for Work and Pensions, the Ministry of Justice, the relevant authorities for Northern Ireland, Scotland and Wales, and various tax-related professional bodies (eg the Chartered Institute of Taxation) have been consulted about these repeal proposals.

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¹⁶³ See CTA 2010, s 1184.

¹⁶⁴ The amendments took effect from 18 March 2010 (the date the Act was passed): see TIOPA 2010, s 381(2)(d) referring to section 374 so far as it related to the various amendments.