FALKLAND ISLANDS

Taxes Ordinance 1997

(ORDINANCE No. 14 OF 1997)

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FALKLAND ISLANDS

Taxes Ordinance 1997

AN ORDINANCE To consolidate the enactments relating to income tax and corporation tax with minor amendments to improve the law.

[DATE OF COMMENCEMENT: IN ACCORDANCE WITH s. 1(2)]
(Unless otherwise indicated)

PART I
GENERAL PROVISIONS

1 Short title and commencement

(1) This Ordinance may be cited as the Taxes Ordinance 1997.

(2) Except as otherwise provided, this Ordinance shall apply in relation to the charge to income tax for years of assessment beginning on or after 1st January 1997 and for the charge to corporation tax for corporation tax years beginning on or after 1st January 1997.

2 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

"ACT" has the meaning given by section 35;

"accounting period" has the meaning given by section 26;

"bank" means a financial institution licensed under the Banking Ordinance;

"base lending rate" means the rate of interest payable in respect of loans to customers in the Falkland Islands for the time being as announced by the Standard Chartered Bank, Stanley Branch;

"basic rate" means the rate of tax chargeable by virtue of section 10(a);

[S. 2(1)/Ord. 23/03/w.e.f. 1/1/04.]

"body of persons" means any body politic or corporate, and any company or partnership or society of persons whether corporate or unincorporate;

"business" means any trade, business, profession or vocation, subject to subsection (9);

[S. 2(1)/Ord. 23/02/w.e.f. 1/1/03.]

"Camp" means any area that is more than 10km from the Christ Church Cathedral excluding-

(i) the Mount Pleasant Complex;

(ii) the Camber (Port William) site,

but includes any agricultural enterprises located within the 10km radius from the Christ Church Cathedral where livestock farming is the primary activity, and the enterprise has an annual turnover exceeding £10,000 or stock numbers exceeding 2,000 Dry Sheep Equivalent;

[S. 4/Ord. 6/16/w.e.f. 1/1/16.]

"chargeable gain" has the meaning given by section 141(2);

"chargeable income", in relation to any chargeable period, means the aggregate amount of the income of any person for that period (less any amounts which may be deducted or allowed in accordance with this Ordinance) in respect of which income tax or corporation tax is chargeable under this Ordinance;

"chargeable period" means, in relation to income tax, a year of assessment and, in relation to corporation tax, a corporation tax year;

"Commissioner" means the Commissioner of Taxation but any reference to a decision or determination of the Commissioner includes a reference to a decision or determination of the Tribunal on appeal from the Commissioner and a reference to a decision or determination of the Supreme Court on a further appeal from the Tribunal on a point of law;

"company" means any body corporate or unincorporated association but does not include a partnership or a local authority;

"controlled waters" has the meaning given by section 2(1) of the Offshore Minerals Ordinance 1994;

"corporation tax year" means the period of 12 months beginning on 1st January in any calendar year;

"designated area" has the meaning given by the Falkland Islands (Continental Shelf) Proclamation 1991;

"director" has the meaning given by subsections (2) and (3) below;

"disposal", in relation to any individual transferable quota or charge, includes any sale or transfer of the quota or charge or of any interest in the quota or charge, whether or not registered under the Fisheries (Conservation and Management) Ordinance 2005;

[S. 2(2)/Ord. 6/06/w.e.f. 1/3/06.]

"earned income relief" . . .

[S. 2(1)/Ord. 23/03/w.e.f. 1/1/04.]

"expenses" includes any expenditure paid by any person in acquiring the whole or any part of an individual transferable quota, or of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure must not be depreciated in the computation of that person's chargeable income for any chargeable period);

[S. 4(1)/Ord. 16/13, to be treated as always having had effect (see s. 4(2).]

"exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the bed and subsoil and their natural resources as is situated beneath controlled waters;

"exploration or exploitation rights" means a petroleum licence or any interest or share in a petroleum licence or any other right to, or to the benefit of, or interest in, assets (including intellectual property) to be produced by exploration or exploitation activities;

"incapacitated person" means any person under the age of eighteen years or any person under a mental incapacity;

"income" includes-

(a) any consideration accruing to a person in respect of the disposal by that person of the whole or any part of an individual transferable quota, or in respect of the creation or transfer of a charge on such a quota, (and, accordingly, the quota or charge represented by any such expenditure shall not be depreciated in the computation of that person's chargeable income for any chargeable period), and

(b) emoluments of an employment received otherwise than in cash and any amount in respect which an employee is chargeable to tax by virtue of section 8(1)(c);

and, subject to that, references to income shall be construed in accordance with section 8;

[S. 2(3)/Ord. 6/06/w.e.f. 1/3/06.]

"individual transferable quota" has the meaning given by section 17(1) of the Fisheries (Conservation and Management) Ordinance 2005.

[S. 2(2)/Ord. 6/06/w.e.f. 1/3/06.]

"intellectual property" includes any data, computer program, patent, know-how, design or similar property;

"know-how" means any industrial information and techniques likely to assist in the working of a source of mineral deposits (including the searching for, discovery of, testing of deposits or the winning of access thereto);

"letting" includes, in relation to a building, any arrangement or agreement (whether or not a lease) under which a person is allowed to occupy the building;

[S. 4(2)(a)/Ord. 2/11/w.e.f. 1/1/11.]

"licensed area" means an area which is subject to a petroleum licence;

"licensee" includes any person with an interest or share in a petroleum licence and, where the context permits, includes any other person with an interest or share in any petroleum won or to be won in a licensed area, and references to a licence shall be construed accordingly;

"magistrate" means the Senior Magistrate;

"maintenance payments" . . .

[S. 4(2)(b)/Ord. 2/11/w.e.f. 1/1/11.]

"notice" means notice in writing;

"notice of assessment" has the meaning given by section 175;

"ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

"period of account", in relation to a company or a business, means a period for which the accounts of the company or business are made up;

"person" includes a body of persons;

"petroleum licence" means a licence granted under section 6 of the Offshore Minerals Ordinance 1994 in accordance with the Offshore Petroleum (Licensing) Regulations 1995 or Offshore Petroleum (Licensing) Regulations 2000;

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

"pipe-line" means a pipe-line as defined in section 38(1) of the Offshore Minerals Ordinance 1994;

"prescribed" means prescribed by rule under this Ordinance;

"recognized stock exchange" means-

(a) the London Stock Exchange; and

[S. 2(2)/Ord. 26/98/w.e.f. 1/1/97.]

(b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognized stock exchange by order made by the Commissioner;

"registered co-operative society" means a co-operative society registered under the Co-operative Societies Ordinance 1985;

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

"relevant accounting period", in relation to any chargeable period, means, for corporation tax purposes, the accounting period or periods, and for income tax purposes, the period of account, on the income of which tax for that period falls to be charged;

"return of income" means a return of income under section 12(1);

"ring-fence income" and "ring-fence trade" have the meanings given by section 140;

"**standard scale**" means the standard scale of fines for offences as set out in Schedule 8 to the Criminal Procedure and Evidence Ordinance 2014;

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

"tax", except where the context otherwise requires, means either income tax or corporation tax;

"the Tribunal" means the Tax Appeal Tribunal constituted in accordance with section 180;

"unquoted shares" means shares which are not listed in the official list of a recognized stock exchange and shares (not being so listed) in any company which is not admitted to the Alternative Investment Market of the London Stock Exchange;

[S. 2(3)/Ord. 26/98/w.e.f. 1/1/97.]

"year of assessment" means the period of twelve months beginning on 1st January in any year.

(2) In this Ordinance "director" means-

(a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body;

(b) in relation to a company whose affairs are managed by a single director or similar person, that director or person; and

(c) in relation to a company whose affairs are managed by the members themselves, a member of the company.

(3) In this Ordinance "director", in relation to a company, also includes any person in accordance with whose directions or instructions the company's directors (as defined in subsection (2)) are accustomed to act; but for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company's directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.

(4) An order made by the Commissioner designating a stock exchange may designate the exchange-

(a) by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;

(b) may contain such transitional and other supplemental provisions as appear to the Commissioner to be necessary or expedient; and

(c) may be varied or revoked by a subsequent order so made.

(5) For the avoidance of doubt it is hereby declared that any reference in this Ordinance to an employment includes a reference to an office, and references to an employee shall be construed accordingly.

(6) In this Ordinance references to the higher rate or to the lower rate shall be construed in accordance with section 10.

(7) In this Ordinance-

(a) any reference to a person being connected with another person, shall be construed in accordance with section 208;

(b) any reference to a person being in control of another, shall be construed in accordance with section 209 or 210, as the context may require; and

(c) any reference to a subsidiary shall be construed in accordance with section 207

(8) For the purposes of income tax and corporation tax a source of income is within the charge to income tax or corporation tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax shall be similarly construed.

(9) For the purposes of this Ordinance-

(a) letting a building in the Falkland Islands (or part of it) for residential use is to be treated as carrying on a business in the Falkland Islands; and

(b) letting a building outside the Falkland Islands (or part of it) for residential use is to be treated as carrying on a business in the place where the building is situated.

[S. 2(2)/Ord. 23/02/w.e.f. 1/1/03 and s. 4(3)/Ord. 2/11/w.e.f. 1/1/11.]

(10) . . .

[S. 4(4)/Ord. 2/11/w.e.f. 1/1/11.]

3 Territorial sea and designated areas

(1) This section has effect for all purposes of income tax and corporation tax.

(2) The territorial sea of the Falkland Islands shall be deemed to be part of the Falkland Islands.

(3) Any profits or gains from exploration or exploitation activities or from exploration or exploitation rights shall be treated as profits or gains from activities or property in the Falkland Islands.

(4) Profits or gains within subsection (3) above which accrue to a company which-

(a) is not resident in the Falkland Islands; and

(b) carries on a business otherwise than through a branch or agency in the Falkland Islands,

shall be deemed not to be profits or gains directly or indirectly arising through or from or accruing to that business.

(5) Any emoluments from an employment in respect of duties performed in a designated area in connection with exploration or exploitation activities shall be treated for the purposes of this Ordinance as emoluments in respect of duties performed in the Falkland Islands.

(6) Gains accruing on the disposal of unquoted shares in companies which derive any part of their value directly or indirectly from exploration or exploitation assets or exploration or exploitation rights shall be deemed to be gains accruing on the disposal of assets situated in the Falkland Islands.

(7) Any reference in this section to gains includes a reference to capital gains.

4 Transitional provisions

(1) The continuity of the law relating to income tax shall not be affected by the substitution of this Ordinance for the enactments repealed by this Ordinance and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Ordinance or any Ordinance amended by this Ordinance) to, or to things done or falling to be done under or for the purposes of, any provision of this Ordinance shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made or otherwise coming into existence after the commencement of this Ordinance) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Ordinance has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Where an offence for the continuation of which a penalty was provided has been committed under an enactment repealed by this Ordinance, proceedings may be taken under this Ordinance in respect of the continuance of the offence after the commencement of this Ordinance in the same manner as if the offence had been committed under the corresponding provision of this Ordinance.

5 Appointment and duties of Commissioner of Taxation, Deputy Commissioner, etc.

(1) The Governor shall appoint a public officer to be Commissioner of Taxation ("the Commissioner"), and income tax and corporation tax shall be under the care and management of the Commissioner.

(2) The Governor shall appoint such collectors and officers as may be necessary to collect, assess, receive and account for income tax and corporation tax, and generally to assist the Commissioner and the Deputy Commissioner in the performance of their functions

(3) The Commissioner shall generally carry out the provisions of and exercise the powers delegated to or vested in him under this Ordinance and may in particular prescribe the form of returns, claims, statements and notices under this Ordinance.

(4) The Governor may appoint a Deputy Commissioner of Taxation to whom the Commissioner may delegate any of his functions under this Ordinance or under any instrument made under this Ordinance or under any other enactment relating to taxation.

6 Impeding or obstructing Commissioner or officers

Any person who obstructs or impedes or molests the Commissioner or a collector or other officer lawfully authorized by this Ordinance in the discharge of his duties or in his official capacity or in the exercise of his powers commits an offence under this Ordinance.

7 Power to remit

(1) The Governor in Council may remit the whole or any part of the tax payable by any person if he is satisfied that it would be just and equitable to do so.

(2) Notice of any remission of tax under this section shall be published in the Gazette.

(3) The Commissioner may in his discretion mitigate any penalty, or stay or compound any proceedings for a penalty, and may also after judgment further mitigate or entirely remit the penalty.

PART II
THE CHARGE TO INCOME TAX AND CORPORATION TAX

CHAPTER I
INCOME TAX

The charge to income tax

8 The charge to income tax

(1) Subject to the provisions of this Ordinance, income tax shall be payable for a year of assessment at the rate or rates specified in section 10 for that year on the income of any person accruing in or derived from the Falkland Islands or elsewhere, and whether received in the Falkland Islands or not in respect of-

(a) gains or profits from any business carried on by or exercised by that person;

(b) gains or profits from any employment;

[S. 3/Ord. 23/02/w.e.f. 1/1/03.]

(c) the prescribed annual value of any prescribed benefit received otherwise than in money in respect of any employment (not being chargeable to tax under paragraph (b));

[S. 3(1)/Ord. 23/03/w.e.f. 1/1/04.]

(d) . . .

[S. 3(1)/Ord. 23/03/w.e.f. 1/1/04.]

(e) dividends, distributions, interest, or discounts;

[S. 5/Ord. 2/11/w.e.f. 1/1/11.]

(f) any pension, charge or annuity;

(g) rents, royalties, premiums, and any other profits arising from -property; and

(h) ...

[S. 25(a)/Ord. 3/10/w.e.f. 1/1/11, s. 14(1)/Ord 4/18/w.e.f.1/1/18.]

(2) Rules may be made providing for the valuation of any emolument of employment received otherwise than in money in respect of which an employee is chargeable to tax under subsection (1)(b).

[S. 3(2)/Ord. 23/03/w.e.f. 1/1/04.]

(2A) Rules made-

(a) for the purposes of subsection (1)(c) prescribing the value of any benefit received otherwise than in money, and prescribing benefits the receipt of which will not give rise to a charge to tax under subsection (1)(c); or

(b) for the purposes of subsection (2),

shall be made by the Governor, and shall not come into effect unless they were approved by the Legislative Assembly before they are made or are confirmed by the Legislative Assembly.

[S. 3(2)/Ord. 23/03/w.e.f. 1/1/04 and Revision w.e.f. 31/07/2017]

(2B) Rules for the purposes of subsection (1)(c) or (2) may provide that any non-cash emolument or benefit received by one individual is, in such cases as may be prescribed in the Rules, to be deemed to be received by another individual.

[S. 3(2)/Ord. 23/03/w.e.f. 1/1/04.]

(3) . . .

[S. 3(2)/Ord. 23/03/w.e.f. 1/1/04.]

(4) . . .

[S. 3(3)/Ord. 23/03/w.e.f. 1/1/04.]

(5) It is hereby declared that for the purposes of determining the amount of tax payable in accordance with this Ordinance in respect of any net sum, the net sum shall be deemed to be increased to such gross amount as will, after deduction of the amount of tax so payable in respect of an amount equal to that gross amount produce an amount equal to the net sum.

(6) In subsection (5) above a "net sum" is a sum payable to or in respect of a person under any agreement or arrangement which (however expressed) provides for the sum to be paid wholly or partly free of tax.

9 Basis of assessment

(1) Income tax shall be charged, levied and collected for each year of assessment on the chargeable income of any person for the year immediately preceding the year of assessment.

(1A) For the purposes of this Ordinance, income falling within section 8(1)(b) shall be treated as being received and paid at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)-

(a) the time when payment of or on account of the income is actually made;

(b) the time when a person becomes entitled to the income;

(c) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and sums on account of the income are credited in the company's accounts or records, the time when sums on account of the income are so credited;

(d) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;

(e) in a case where the income is income from an employment with a company, the holder of the employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.

[S. 4(1)/Ord. 23/02/w.e.f. 1/1/03.]

(1B) Subsection (1A)(c), (d) or (e) above applies whether or not the employment concerned is that of director.

[S. 4(1)/Ord. 23/02/w.e.f. 1/1/03.]

(1C) Paragraph (c), (d) or (e) of subsection (1A) above applies if the holder of the employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.

[S. 4(1)/Ord. 23/02/w.e.f. 1/1/03.]

(1D) For the purposes of the rule in subsection (1A)(c) above, any restriction on the right to draw the sums is to be disregarded.

[S. 4(1)/Ord. 23/02/w.e.f. 1/1/03.]

(2) Where the Commissioner is satisfied that any person usually makes up the accounts of his business to a date other than 31st December, the Commissioner shall permit the gains or profits of that business to be computed, for the purposes of income tax, on the income of the year terminating on the business's accounting date in the year immediately preceding the year of assessment.

(3) In subsection (2) "accounting date" means the date to which the accounts in question have usually been made up.

(4) Subject to any provision to the contrary in this Ordinance, the date to which the accounts of any business the profits of which are within the charge to income tax are made up shall not be changed by any voluntary act (excepting voluntary liquidation or bankruptcy or ceasing to carry on the business), unless the Commissioner so requires or approves.

10 Rates of income tax

Income tax shall be charged on the chargeable income of a person at the following rates-

(a) in the case of any person other than a company-

(i) on the first £18,000 of his chargeable income, at 21 per cent; and

[S 9(2)/Ord 6/2006/w.e.f. 1/3/2006 and S. 25(b)/Ord. 3/10/w.e.f. 1/1/11; Sch.Pt.A./Ord. 6/2024/w.e.f. 01/01/2025]

(ii) on the remainder, at 26 per cent;

[S 9(2)/Ord 6/2006/w.e.f. 1/3/2006 and S. 3(c)/Ord. 3/07/w.e.f. 1/1/08, having effect from the year of assessment beginning on 1/1/09.]

(b) . . .

[S 9(2)/Ord 6/2006/w.e.f. 1/3/2006.]

and in this Ordinance any reference to the lower rate or the higher rate, in relation to income tax, is a reference to the lower or the higher rate specified in paragraph (a) respectively.

[Revision w.e.f. 31/07/2017]

11 Time for payment of income tax and interest on overdue tax

(1) Income tax charged in an assessment for a year of assessment shall be payable before-

(a) the expiry of the period of thirty days beginning with the date of service of the notice of assessment; or

[S. 5(1)/Ord. 23/02/w.e.f. 1/1/03.]

(b) if later 1 October in that year.

[S. 5(2)/Ord. 23/02/w.e.f. 1/1/03 and s. 6/Ord. 2/11/w.e.f. 1/1/11.]

(2) Interest shall be due on income tax which remains unpaid after the date on which it is payable under subsection (1) above.

[S. 5(2)/Ord. 23/02/w.e.f. 1/1/03.]

(3) Interest due under subsection (2) above shall be due at the rate of 3 per cent per annum over base lending rate.

[S. 5(2)/Ord. 23/02/w.e.f. 1/1/03.]

(4) Interest due under subsection (2) above shall run from the date when the unpaid tax was payable under subsection (1) above, whether or not payment of the tax has been postponed under section 183, but where payment of any tax has been postponed, interest on that tax shall not be payable until the tax becomes payable.

[S. 5(2)/Ord. 23/02/w.e.f. 1/1/03.]

12 Notice of chargeability and tax returns

(1) The Commissioner may by notice require any person chargeable to income tax to furnish him within sixty days of the date of issue of the notice or such longer period as the Commissioner may specify in the notice with a return relating to his income which shall include such particulars as the Commissioner may require for the purposes of this Ordinance.

[S. 5(3)/Ord. 23/02/w.e.f. 1/1/03.]

(2) The Commissioner may by notice require any person chargeable to income tax for a year of assessment, who claims to be or the Commissioner believes is carrying on a business in the

Falkland Islands, to lodge with his return under subsection (1) above or within such period thereafter as may be specified in the notice-

(a) accounts of that business for the period of account last ending before the commencement of that year of assessment in such form as may be specified in the notice; and

(b) any notes to the accounts and an explanation of any matter which may be necessary to enable the accounts to be understood,

and the accounts shall if the notice so requires be audited by an auditor approved by the Commissioner.

(3) Every person chargeable to income tax for any year of assessment shall not later than four months after the beginning of that year give notice to the Commissioner that he is so chargeable, specifying each source of income separately, unless he has previously received a notice under subsection (1) above or made a return of his income for that year.

(4) . . .

[S. 4/Ord. 2/12/w.e.f. 1/1/12.]

12A Notice of chargeability and tax returns: penalties

(1) A person who does not comply with a requirement of section 12 is liable to a penalty of £100.

(2) A person who has still not complied with a requirement of section 12 three months after the due date for compliance is liable to a further penalty of £200.

(3) A penalty under subsection (1) or subsection (2)–

(a) is incurred whether or not a prosecution is brought;

(b) attracts the provisions of Schedule 4 and any other provision of this Ordinance about penalties; and

(c) may be wholly or partially remitted by the Commissioner following an application by the person on whom it is imposed, but only if the Commissioner is satisfied that remission is appropriate in the special circumstances of the case.

(4) The payment of a penalty for which a person is liable under subsection (1) or (2) does not either–

(a) relieve the person of the obligation to comply with the requirement to which the penalty relates (if that has not yet been done); or

(b) preclude the bringing of a prosecution.

[S. 5/Ord. 2/12/w.e.f. 1/1/12.]

13 Income from sources outside the Falkland Islands

(1) This section applies to income which arises from a source outside the Falkland Islands.

(2) Income tax chargeable for any year of assessment shall not be payable in respect of income to which this section applies if it accrues to a person who is neither resident nor ordinarily resident in the Falkland Islands at the time the income accrues to him.

(3) . . .

[S. 5(3)/Ord. 23/02/w.e.f. 1/1/03.]

(4) Where the source of income is an employment then, for the purposes of this section-

(a) a source of income is outside the Falkland Islands if it is an office or employment the duties of which are performed outside the Falkland Islands; and

(b) if the duties of the office or employment are performed partly outside and partly within the Falkland Islands, the amount of the remuneration from that office or employment which is to be taken as arising from a source outside the Falkland Islands shall be such part of the total remuneration for the period in question as the Commissioner shall determine having regard in particular to the amount of time devoted to the performance of the duties outside the Falkland Islands as compared to the amount of time devoted to the duties performed within the Falkland Islands.

(5) Where an employment is in substance one the duties of which fall in the year of assessment to be performed in the Falkland Islands, then for the purposes of this section there shall be treated as so performed any duties performed outside the Falkland Islands the performance of which is merely incidental to the performance of other duties in the Falkland Islands.

(6) In this section any reference to an employment includes a reference to a contract for services.

14 . . .

[S. 5(3)/Ord. 23/02/w.e.f. 1/1/03.]

Ascertainment of chargeable income of individuals

15 Deduction of retirement pension contributions

(1) Subsection (2) applies to-

(a) compulsory contributions made under section 10 of the Retirement Pensions Ordinance 1996; and

[Revision w.e.f. 31/07/2017]

(b) voluntary contributions made under section 12 of the Retirement Pensions Ordinance.

(2) When calculating the income of an individual for the purposes of income tax, the individual may deduct contributions to which this subsection applies but only if they are made by the individual on the individual's own behalf.

[S. 7/Ord. 2/11/w.e.f. 1/1/11.[i]]

15A Deduction of certain annual subscriptions

(1) Subsection (2) applies when-

(a) an individual pays an annual subscription to a body of persons approved by the Commissioner under subsection (3); and

(b) the activities of the body are relevant to the performance by the individual of the duties of an office or employment.

(2) If this subsection applies, the individual may deduct the subscription from the emoluments of the office or employment.

(3) The Commissioner may approve a body of persons if-

(a) the activities of the body are carried on otherwise than for profit; and

(b) those activities are solely or mainly directed to either or both of the following objects-

(i) the advancement or spreading of knowledge (whether generally or among persons belonging to the same or similar professions or occupying the same or similar positions); and

(ii) the maintenance or improvement of standards of conduct and competence among the members of a profession.

(4) For the purposes of subsection (1)(b), the activities of a body are relevant to the performance of the duties of an office or employment if-

(a) the performance of those duties is directly affected by the knowledge advanced or spread by the body; or

(b) the duties involve the exercise of the profession with which the body is concerned.

[S. 8/Ord. 2/11/w.e.f. 1/1/11.]

16 Personal allowance

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(1) In computing the chargeable income of an individual there shall be allowed a deduction of £16,860.00.

[S. 31/Ord. 7/13/w.e.f. 1/1/2014; Sch.Pt.A./Ord. 5/23/w.e.f. 01/01/2024; Sch.Pt.A./Ord. 6/2024/w.e.f. 01/01/2025]

(2) . . .

[S. 6(2)/Ord. 23/03/w.e.f. 1/1/04.]

(3) . . .

[S. 6(2)/Ord. 23/03/w.e.f. 1/1/04.]

(4) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

17 . . .

[S. 6(3)/Ord. 23/03/w.e.f. 1/1/04.]

18 . . .

[S. 6(4)/Ord. 23/03/w.e.f. 1/1/04.]

19 . . .

[S. 6(5)/Ord. 23/03/w.e.f. 1/1/04.]

20 . . .

[S. 6(5)/Ord. 23/03/w.e.f. 1/1/04.]

21 Deceased persons

(1) In any case where-

(a) any person dies during the year immediately preceding a year of assessment and such person would but for his death have been chargeable to tax for that year of assessment; or

(b) any person dies during the year of assessment as respects which no assessment has been made on him, or a person dies within two years after the expiration of such a year of assessment,

the personal representative of that person shall be liable to and charged with the payment of the tax with which that person would have been chargeable, and shall be answerable for doing all such acts, matters and things as that person would if he were alive be liable to do under this Ordinance.

(2) If, in a case falling within subsection (1)(a)-

(a) the personal representative distributes the deceased's estate before 1st January immediately following the death; and

(b) the rate of tax for the year of assessment has not been fixed at the date of distribution of the estate,

the personal representative shall pay the tax at the rate or rates in force at that date.

22 Workers supplied by agencies

(1) Subject to the provisions of this section, where-

(a) an individual ("the worker") renders or is under an obligation to render personal services to another person ("the client") and is subject to, or to the right of, supervision, direction or control as to the manner in which he renders those services;

(b) the worker is supplied to the client by or through a third person ("the agency") and renders or is under an obligation to render those services under the terms of a contract between the worker and the agency ("the relevant contract"); and

(c) remuneration receivable under or in consequence of that contract would not, apart from this section, be chargeable to income tax as the emoluments of an office or employment,

then, for all the purposes of this Ordinance, the services which the worker renders or is under an obligation to render to the client under that contract shall be treated as if they were the duties of

an office or employment held by the worker, and all remuneration receivable under or in consequence of that contract shall be treated as emoluments of that office or employment and shall be assessable to income tax accordingly.

(2) Subsection (1)(b) above includes cases in which the third person is an unincorporated body of which the worker is a member.

(3) Subsection (1) above shall apply whether or not the worker renders or is under an obligation to render the services in question as a partner in a firm or a member of an unincorporated body; and where, in any case in which that subsection applies, the worker is a partner in a firm or a member of such a body, remuneration receivable under or in consequence of the relevant contract shall be treated for all the purposes of this Ordinance as income of the worker and not as income of the firm or body.

(4) For the purposes of this section, any remuneration which the client pays or provides by reason of the worker being a person who renders or is under an obligation to render the services in question shall be treated as receivable in consequence of the relevant contract.

(5) Subsection (1) above shall not apply-

(a) if the services in question are services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or

(b) if the services in question are rendered wholly in the worker's own home or at other premises which are neither under the control or management of the client nor premises at which the worker is required, by reason of the nature of the services, to render them.

(6) Where an individual enters into arrangements with another person with a view to the rendering of personal services by the individual, being arrangements such that, if and when he renders any such services as a result of the arrangements, those services will be treated under subsection (1) above as if they were the duties of an office or employment held by him, then for all purposes of this Ordinance any remuneration receivable under or in consequence of the arrangements shall be treated as emoluments of an office or employment held by the individual and shall be assessable to income tax accordingly.

(7) In this section "remuneration" in relation to an individual, does not include anything in respect of which he would not have been chargeable to tax as an emolument of an office or employment if it had been receivable in connection with an office or employment held by him but, subject to that, includes every form of payment and all prescribed benefits (within the meaning of section 8).

22A Workers supplied by intermediaries

(1) This section applies, subject to any prescribed exceptions, where-

(a) an individual ("the worker") renders or is under an obligation to render personal services to another person ("the client") for the purposes of a business carried on by the client in pursuance of arrangements involving a intermediary ("the intermediary"); and

(b) the worker is not an employee of the client but the circumstances are such that if the services were provided by the worker directly under a contract between the worker and

the client, the worker would be regarded as an employee of the client for the purposes of this Ordinance.

(2) If-

(a) the worker receives, or has rights entitling him to receive (whether immediately or at a specified time or in specified circumstances), a payment or other benefit directly or indirectly from the intermediary that is not chargeable to income tax as earned income (whether or not he also receives any amounts which are so chargeable); and

(b) the client makes a payment (in cash or in kind) ("the quasi-remuneration") to the intermediary in respect of the services provided by the worker,

then, for all purposes on this Ordinance, the quasi-remuneration shall be deemed to be a payment of remuneration made by the client to the worker, and, for the purposes of Part IV of this Ordinance and any regulations made under that Part, the client shall be deemed to be the employer of the worker and the worker shall be deemed to be the employee of the client.

(3) The cases where subsection (1) applies include (subject to any prescribed exceptions) cases-

(a) where the intermediary is a partnership or an unincorporated body of which the worker is a member; and

(b) where the worker holds an office with the client.

(4) For the purposes of this section "business" includes any activity carried on by the government or by any public or local authority or by any body corporate or unincorporated body or partnership.

(5) The circumstances referred to in subsection (1) include the terms on which the services are provided having regard to the terms of the contract forming part of the arrangements under which the services are provided.

(6) Subject to any prescribed exceptions, section (1) shall apply whether or not the worker renders or is under an obligation to render the services in question as a partner in a firm or a member of an unincorporated body; and where, in any case in which that subsection applies, the worker is a partner in a firm or a member of such a body, remuneration receivable under or in consequence of the relevant contract shall be treated for all the purposes of this Ordinance as income of the worker and not as income of the firm or body.

(7) Subsection (1) above shall not apply-

(a) if the services in question are services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or

(b) if the services in question are rendered wholly in the worker's own home or at other premises which are neither under the control or management of the client nor premises at which the worker is required, by reason of the nature of the services, to render them.

[S. 8/Ord. 23/02/w.e.f. 1/1/03.]

CHAPTER II
CORPORATION TAX

The charge to corporation tax

23 The charge to corporation tax and exclusion of income tax

(1) Corporation tax shall be charged on income of companies, and the enactments relating to corporation tax shall apply, for any corporation tax year beginning on or after 1st January 1997

(2) The provisions of this Ordinance relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if-

(a) the company is resident in the Falkland Islands; or

(b) the income is, in the case of a company not so resident, within the chargeable income of the company by virtue of section 34.

(3) Subject to the provisions of the enactments relating to corporation tax, where a company resident in the Falkland Islands receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company by an assessment made for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax).

(4) References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(5) A company shall not be entitled to a repayment of income tax by virtue of subsection (2) above or to set off any amount of income tax under subsection (3) above except on a claim made in that behalf, and effect shall also be given to any other exemption from income tax conferred by the corporation tax legislation which calls for repayment of tax, by means of a claim.

(6) ...

[S. 5/Ord. 6/16/w.e.f. 1/1/16; S. 4/Ord. 10/20/w.e.f. 1/1/21.]

(7) ...

[S. 5/Ord. 6/16/w.e.f. 1/1/16; S. 4/Ord. 10/20/w.e.f. 1/1/21).]

(8) ...

[S. 5/Ord. 6/16/w.e.f. 1/1/16; S 4/Ord. 10/20/w.e.f. 1/1/21.]

24 Basis of assessments, and chargeable income

(1) Except as otherwise provided by this Ordinance, corporation tax for any corporation tax year shall be charged on a company on the full amount of its income for that year, wherever the income arises and whether or not it is received in or transmitted to the Falkland Islands, without any other deduction than is authorized by this Ordinance.

(2) The amount of a company's income for a corporation tax year shall be determined by reference to accounting periods of the company and where an accounting period of a company falls in more than one corporation tax year, the amount chargeable shall, where necessary and after making any deduction authorized by this Ordinance, be apportioned between those years.

(3) A company shall be chargeable to corporation tax on income accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the income accrued to it directly; and a company shall be chargeable to corporation tax on income arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on income accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in that income.

25 Computation of income: application of income tax principles

(1) Except as otherwise provided by this Ordinance, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include so much of any enactment as makes special provision for individuals in relation to matters referred to in subsection (1) above, and in particular does not include sections 13 to 22 of this Ordinance.

(3) Without prejudice to the generality of subsection (1) above, any enactment which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(4) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax-

(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the enactments relating to corporation tax, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose, references in any enactment applying to both taxes to a relief from or charge to income tax, or to a specified enactment relating to income tax, shall, in the absence of or subject to any express adaptation, be construed as being or including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding enactment relating to corporation tax.

26 Accounting periods

(1) This section has effect in relation to corporation tax for the purpose of determining when an accounting period of a company begins and ends.

(2) An accounting period of a company begins, unless the Commissioner otherwise approves, whenever-

(a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the Falkland Islands or acquiring a source of income, or otherwise; or

(b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for the purposes of corporation tax, unless the Commissioner otherwise approves, on the occurrence of the first of the following-

(a) the expiration of twelve months from the beginning of the accounting period;

(b) an accounting date of the company or the end of any period for which the company does not make up accounts;

(c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;

(d) the company beginning or ceasing to be resident in the Falkland Islands;

(e) the company ceasing to be within the charge to corporation tax.

[S. 5(1)/Ord. 18/12/effective in respect of accounting periods beginning on or after 1 January 2013.]

(4) For the purposes of corporation tax a company resident in the Falkland Islands, if not otherwise within the charge to corporation tax, comes within the charge to corporation tax at the time when it commences to carry on business.

(5) If a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) shall apply with reference to the accounting date of such one of the trades as the Commissioner may determine.

(6) Notwithstanding anything in subsections (1) to (5) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up and thereafter, subject to section 29, an accounting period shall not end otherwise than by the expiration of twelve months from its beginning or by the completion of the winding up.

(7) For the purposes of subsection (6), a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding-up petition if no such resolution has previously been passed and a winding-up order is made on the petition, or the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act 1948 in its application to the Falkland Islands.

27 Time for payment of tax

Corporation tax for a corporation tax year charged on the income of an accounting period shall be due and payable on the day following the expiry of eight months from the end of that accounting period (whether or not the tax has been assessed).

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

28 Corporation tax rates

(1) Corporation tax shall be charged on the chargeable income of a company for an accounting period at the following rates-

(i) on so much of its chargeable income as does not exceed the threshold amount, at 21 per cent; and

[S. 3(d)/Ord. 3/07/w.e.f. 1/1/08, having effect for accounting periods beginning on or after 1/1/08.]

(ii) on its chargeable income not falling within paragraph (i), at 26 per cent.

[S. 3(e)/Ord. 3/07/w.e.f. 1/1/08, having effect for accounting periods beginning on or after 1/1/08.]

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

(a) if at any time in that period the company has any associated companies the threshold amount is-

$$\frac{£500{,}000.00}{1 + A}$$

where A is the number of associated companies; or

(b) if paragraph (a) does not apply, the threshold amount is £500,000.00

[S. 5(1)/Ord. 23/03/w.e.f. 1/1/04 and s 20 Ord. 5/2016/w.e.f. 1/1/2017.]

(3) In subsection (1)(i) above the reference to a company's chargeable income for any period is a reference to the amount of that income less the amount of-

[Revision w.e.f. 31/07/2017]

(a) any ring fence income of the company for that period;

(b) any franked investment income of the company for that period; or

(c) ...

[S. 6(a)/Ord. 6/16/w.e.f. 1/1/16; S. 5(a)/Ord. 10/20/w.e.f. 1/1/21.]

(3A) For purposes of subsection (3)(c) a company in Camp is eligible for a tax credit for—

(a) ...

(b) ...

[S. 6(b)/Ord. 6/16/w.e.f. 1/1/16; S. 5(a)/Ord. 10/20/w.e.f. 1/1/21; S. 5(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(3B) ...

[S. 6(b)/Ord. 6/16/w.e.f. 1/1/16; S. 5(a)/Ord. 10/20/w.e.f. 1/1/21.]

(3C) ...

[S. 6(b)/Ord. 6/16/w.e.f. 1/1/16; S. 5(a)/Ord. 10/20/w.e.f. 1/1/21.]

(3D) ...

[S. 6(b)/Ord. 6/16/w.e.f. 1/1/16; S.5(a)/Ord. 10/20/w.e.f. 1/1/21.]

(4) . . .

[S. 5(1)/Ord. 23/03/w.e.f. 1/1/04.]

(5) . . .

[S. 5(1)/Ord. 23/03/w.e.f. 1/1/04.]

(6) For the purposes of subsection (2) above-

(a) a company is associated with another at any time if at that time one of them has control of the other or both are controlled by the same person or persons; and

(b) an associated company which has not carried on any business during the accounting period in question or, if associated for part only of that period, during that part, shall be disregarded.

Section 210 shall apply for the purposes of this subsection.

[S. 5(2)/Ord. 23/03/w.e.f. 1/1/04.]

(7) In relation to any accounting period of less than twelve months, the threshold amount shall be proportionately reduced.

[S. 5(3)/Ord. 23/03/w.e.f. 1/1/04 and s. 5/Ord. 16/13/w.e.f. 1/1/14.]

29 Tax on company in liquidation

(1) In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsection (3) below, corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed for the penultimate year by an Ordinance passed before the completion of the winding-up.

(3) If, before the affairs of the company are completely wound up, the rate mentioned in subsection (2) above has been fixed for the final year, that subsection shall have effect in relation to that rate as if for the references to the penultimate year there were substituted references to the final year.

(4) An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because it was made before the end of the accounting period.

(5) In making an assessment after the commencement of the winding-up of the company, but before the date when its affairs are completely wound up, the Commissioner may, with the

concurrence of the liquidator, act on an assumption as to when that date will fall, so far as it governs section 26(6).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 26(6) shall thereafter apply as if that new accounting period began with the commencement of the winding-up.

(7) Where the winding-up commenced before the company's final year, subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

30 Filing of accounts, etc.

(1) A company which is chargeable to corporation tax for any corporation tax year shall deliver to the Commissioner-

(a) a return of its income and profits in such form as the Commissioner may prescribe; and

(b) the accounts of the company for the period of account which is or includes the whole or any part of the accounting period by reference to which the company is chargeable to tax for that year,

within nine months of the end of that period of account.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

[S. 3(2)/Ord. 26/98/ to be deemed always to have had effect.]

(2) The reference in subsection (1) above to the accounts of a company-

(a) if the company is required by the Companies Act 1948 as it applies in the Falkland Islands or by the Companies Act 1985 (whether as it applies in the United Kingdom or elsewhere) to prepare accounts for that period of account, is a reference to those accounts together with any documents annexed to those accounts; or

(b) in any other case, is a reference to accounts which give a true and fair view of the company's affairs and its profit and loss for that period of account.

(3) The Commissioner may, if he thinks fit, extend the period for delivery of accounts by any company.

(4) The Commissioner may by notice require a company to submit such other information in writing as may be specified in the notice, which, in relation to a company which is trading through a branch or agency (whether situated in the Falkland Islands or elsewhere) for the whole or part of a period of account of the company, may include the trading accounts of that branch or agency, and the company shall comply with the notice within sixty days of the date of service of the notice.

(5) Every person making a return under subsection (1) or submitting information under subsection (4) shall include in the return or with the information a declaration made by him to the effect that the return or information is to the best of his knowledge correct and complete.

(6) Different returns may be prescribed in relation to different descriptions of company.

(7) Subject to the provisions of this Ordinance, a company shall make any claim, election or disclaimer under or for the purposes of this Ordinance relating to the company's liability to corporation tax for any period-

(a) by notice delivered to the Commissioner together with the accounts of the company referred to in subsection (1) above; or

(b) by notice delivered later, which shall include any necessary amendments to the accounts, but (notwithstanding any other provision of this Ordinance) the company may not in any case make such a claim, election or disclaimer after an assessment for that period has been made except with the consent of the Commissioner.

31 Accounts, and payment of tax, in US dollars

(1) Except as provided by this section, a company within the charge to corporation tax shall keep its accounting records, make up its accounts and account for tax in sterling.

(2) Subject to subsection (3) below, where a company is carrying on a ring-fence trade-

(a) the company may elect to keep its accounting records, to compute the profits and losses of that trade in United States dollars and to comply with the requirements of section 30, as respects that trade, by delivering accounts made up in that currency instead of in sterling; and

(b) if an election under this subsection is in force, the company shall account for corporation tax in respect of its ring-fence trade in that currency instead of in sterling.

(3) An election under subsection (2) above made by a company which is or becomes a member of a group of companies shall have effect in relation to any other member of that group to whom the ring-fence trade of the first company is transferred in whole or in part.

For the purposes of this subsection, references to a group shall be construed as a reference to a 75 per cent group within the meaning of section 139 disregarding subsection (5)(c) of that section and section 131(2).

(4) In any case where a company carrying on a ring-fence trade also carries on any other business as respects which it is within the charge to corporation tax in the Falkland Islands-

(a) subsection (2) shall not apply; but

(b) the company may elect to keep its accounting records and to compute the profits and losses of that trade in United States dollars;

and the profits or losses of the ring-fence trade shall be converted into sterling for the purposes of the company's accounts submitted in accordance with section 30 at the London closing rate for the last day of the accounting period to which the accounts relate or such other rate as may be prescribed under rules made by the Commissioner for the purposes of this section.

(5) An election under subsection (2) or (4) above-

(a) shall be made by notice to the Commissioner and shall be accompanied by such information as the Commissioner may require;

(b) shall be of no effect if the Commissioner notifies the company that he has decided not to accept the election, subject to the company's right to appeal against such a notice to the Tax Appeal Tribunal under section 181(1)(e);

(c) shall be of no effect unless it is made before the expiry of the period of nine months beginning on the day the company began to carry on its ring-fence trade;

(d) shall have effect from that day; and

(e) shall be irrevocable.

(6) A notice under subsection (5)(b) above shall not be given more than ninety days after the notice of election is delivered to the Commissioner.

(7) Where a company has made an effective election under subsection (2) above, any assessment on that company in respect of its ring-fence trade shall be expressed in United States dollars (in accordance with the preceding provisions of this section) and any interest or penalty calculated by reference to an amount of United States dollars shall accordingly also be payable in dollars.

31A Accounts in other currencies for non-ring-fence traders

(1) A company which is within the charge to tax in respect of any business but is not a ring-fence trader may elect to keep its accounting records, and to compute the profits and losses of the business for its accounting period in a currency other than sterling.

(2) Where an election is in force under this section the profits and losses so computed shall be converted into sterling for the purposes of the company's accounts submitted in accordance with section 30 at the London closing rate for the last day of the accounting period for which the computation is made or such other rate as the Commissioner may by rules prescribe.

(3) Paragraphs (a), (b) and (e) of section 31(5) shall apply in relation to an election under this section and such an election-

(a) shall be made before the end of the period of nine months beginning with the relevant day; and

(b) shall have effect from that day.

In this subsection "the relevant day" means the day on which the company begins to be within the charge to tax in the Falkland Islands, or, if later, the day on which this section comes into force.

[S. 9/Ord. 23/02/w.e.f. 1/1/03.]

32 …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

33 Interest on tax paid late, and penalties for late filing of accounts, etc., and late payment of tax

(1) Interest shall be due on any corporation tax (including ACT) remaining unpaid after the date on which it is due at the rate of 3 per cent per annum over base lending rate.

(1A) Interest due under subsection (1) above shall run from the date when the unpaid tax was due under section 27, whether or not payment of the tax has been postponed under section 183, but where payment of any tax has been postponed, interest on that tax shall not be payable until the tax becomes payable.

(2) A company which does not deliver its accounts or the return referred to in section 30(1)(a) for an accounting period within the time allowed by section 30 ("the due time") shall be liable-

[S. 10/Ord. 23/02/w.e.f. 1/1/03; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(a) if the accounts or the return referred to in section 30(1)(a) are delivered not more than three months after the due time, to a penalty of £100;

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(b) if the accounts or the return referred to in section 30(1)(a) are delivered more than three months after the due time, to a penalty of £200;

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

[S. 6(2)/Ord. 18/12/effective in relation to accounts delivered on or after 1 January 2013.]

(c) if the accounts or the return referred to in section 30(1)(a) are delivered more than six months after the due time, to a penalty (in addition to any other penalty) equal to-

(i) 10 per cent of the unpaid tax, if the accounts or the return referred to in section 30(1)(a) are delivered within 12 months of the due date, or

(ii) 20 per cent of the unpaid tax, if the accounts or the return referred to in section 30(1)(a) are delivered more than 12 months after the due date,

and "the unpaid tax" means the amount of tax, payable by the company for the accounting period for which the accounts or the return referred to in section 30(1)(a) were required, which remains unpaid six months after the due time.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

[S. 6(3)/Ord. 18/12/effective in relation to accounts delivered on or after 1 January 2013.]

(d) . . .

[S. 6(3)/Ord. 18/12/effective in relation to accounts delivered on or after 1 January 2013.]

(3) In any case where a company does not deliver its accounts or the return referred to in section 30(1)(a) within the due time for any three consecutive accounting periods, subsection (2) above shall apply as respects the third accounting period-

(a) with the substitution in paragraph (a) of "£500" for "£100"; and

(b) with the substitution in paragraph (b) of "£1,000" for "£200".

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(4) Any penalty to which a company may be liable under subsection (2) above is in addition to any liability to which the company may also be subject under subsection (1) above as respects the payment of interest on tax remaining unpaid after the date on which it is due.

(5) Any company which fails to comply with a notice under section 30(4) shall be liable-

(a) if the company is not more than three months late in complying with the requirements of section 30(4), to a penalty of £100; or

(b) in any other case, to a penalty of £200

34 Companies not resident in Falkland Islands

Subject to any exceptions provided for by the enactments relating to corporation tax, a company not resident in the Falkland Islands shall be within the charge to corporation tax in respect of all its profits or gains wherever arising or accruing except-

(a) if the company carries on a business otherwise than through a branch or agency in the Falkland Islands, any profits or gains directly or indirectly arising through or from or accruing to that business and not directly or indirectly arising through or from, or accruing to, a business which it carries on in the Falkland Islands;

(b) any profits or gains directly or indirectly arising or accruing from a source outside the Falkland Islands or any designated area and neither excepted by paragraph (a) above nor directly or indirectly arising through or from, or accruing to, a business which it carries on through a branch or agency in the Falkland Islands; and

(c) distributions received from companies resident in the Falkland Islands.

34A Deduction of tax

(1) In this section —

"**company resident in a territory**" means a company which —

(a) by reason of the law of the territory relating to domicile, residence or place of management, is within the charge to tax in the territory; or

(b) if the territory does not have a law referred to in paragraph (a) or the territory has such a law but the law does not apply to the company, is incorporated in the territory;

"**overseas payee company**" means a company —

(a) to which interest is paid or credited; and

(b) which, in a corporation tax year, is not resident in the Falkland Islands and is not carrying on business through a branch or agency in the Falkland Islands to which the interest income is attributable.

"**payer company**" means a company which —

(a) pays or credits interest to an overseas payee company; and

(b) is resident in the Falkland Islands or is carrying on a business through a branch or agency in the Falkland Islands to which the interest is attributable;

"**payment of interest**" means a payment of interest paid or credited to an overseas payee company by a payer company to which this section applies.

(2) This section applies if, in a corporation tax year, a payer company pays interest or credits interest to an overseas payee company.

(3) This section does not apply if —

(a) the overseas payee company —

(i) is resident in a territory specified in Schedule A1 and the interest income is not attributable to a branch or agency in another territory through which the company is carrying on a business; or

(ii) is carrying on a business through a branch or agency in a territory specified in Schedule A1 and the interest income is attributable to that branch or agency; and

(b) the overseas payee company or branch or agency of the overseas payee company is —

(i) the beneficial owner of the interest;

(ii) subject to tax on the interest income in the territory specified in Schedule A1; and

(iii) not involved in any arrangement the main purpose, or one of the main purposes, of which is to obtain an advantage in relation to Falkland Islands tax for the overseas payee company, the branch or agency or any other person.

(4) Subject to subsection (5), a payment of interest is charged to tax under this section at the rate of 10% of the amount of the payment.

(5) Subsection (4) does not apply in relation to a payment of interest if the Commissioner gives notice to the payer company that tax will not be charged on that payment.

(6) Tax charged on a payment of interest must be —

(a) deducted from the gross amount of the payment by the payer company;

(b) credited by and recoverable from the payer company; and

(c) due and payable to the Commissioner by the payer company within 30 days after the end of the month in which the payer company makes the payment of interest.

(7) The payer company must —

(a) submit, together with the amount of tax deducted under subsection (6), a return to the Commissioner that specifies the following —

(i) the gross amount of the payment of interest;

(ii) the date when the payment of interest was paid or credited;

(iii) the identity of the overseas payee company, by specifying at least the name and registered address of the overseas payee company;

(iv) if the interest was paid to the overseas payee company, the account into which the interest was paid;

(v) the amount of the tax deducted;

(b) certify on the return that the return is correct; and

(c) send a copy of the return to the overseas payee company within one month of the date referred to in paragraph (a)(ii).

(8) Part IX applies to and in relation to a payer company who makes a payment of interest with the following modifications —

(a) an assessment to tax may be made on the payer company under sections 172, 173 and 174;

(b) the payer company may object under section 175 to the assessment;

(c) a notice may be served on the payer company under section 176(1);

(d) the payer company may appeal against the assessment to the Tax Appeal Tribunal under section 181;

(e) references in the Part to a return on income include references to a return made under subsection (7); and

(f) any other necessary modifications.

(9) The overseas payee company (or any other person who is the beneficial owner of the interest) is not entitled to recover any tax paid under this section from any person.

[S. 11/Ord. 23/02/w.e.f. 1/1/03; and S. 4/Ord. 17/2019/w.e.f. 1/1/2019]

CHAPTER III
ADVANCE CORPORATION TAX, FRANKED INVESTMENT INCOME AND TAX CREDITS

Advance corporation tax and franked investment income

35 ACT and qualifying distributions

(1) . . .

[S. 9(2)(a)/Ord. 23/03/ for any distribution or payment made on or after 1/1/04.]

(2) . . .

[S. 9(2)(a)/Ord. 23/03/ for any distribution or payment made on or after 1/1/04.]

(3) The provisions of this Ordinance as to the charge, calculation and payment of corporation tax (including provisions conferring any exemption) shall not be construed as affecting the charge, calculation or payment of ACT, and the enactments relating to corporation tax shall apply for the purposes of ACT whether or not they are for the time being applicable for the purposes of corporation tax other than ACT.

36 Interpretation of Chapter III

(1) In this Chapter-

"ACT" means advance corporation tax, that is to say, corporation tax payable in accordance with section 35;

"franked investment income" means income of a company resident in the Falkland Islands which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);

"franked payment" means the sum of the amount or value of a qualifying distribution and such proportion of that amount or value as corresponds to the rate of ACT in force for the corporation tax year in which the distribution is made;

"surplus ACT" has the meaning given by section 37(2);

"surplus of franked investment income" means any such excess as is mentioned in section 39(3) (calculated without regard to franked investment income which by virtue of subsection (4) of that section cannot be used to frank distributions);

"tax credit" means a tax credit under section 49,

and references to any accounting or other period in which a franked payment is made are references to the period in which the distribution in question is made.

(2) References in this Chapter to distributions or payments received by a company apply to any received by another person on behalf of or in trust for the company but not to any received by the company on behalf of or in trust for another person.

(3) References in this Chapter to using franked investment income to frank distributions of a company shall be construed in accordance with section 39(4).

(4) References in this Chapter to an amount of income on which corporation tax falls finally to be borne are references to the amount of that income after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given from or against that income, including deductions and reliefs which under any provision are treated as reducing it for those purposes.

37 Set-off of ACT against liability to corporation tax

(1) Subject to section 153, ACT paid by a company (and not repaid) in respect of any distribution made by it in an accounting period shall be set against its liability to corporation tax on any

income charged to corporation tax for that accounting period and shall accordingly discharge a corresponding amount of that liability.

(2) Where in the case of any accounting period of a company there is an amount of surplus ACT, the company may, within two years after the end of that period, claim to have the whole or any part of that amount treated for the purposes of this section (but not of any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in any of its accounting periods beginning in the six years preceding that period (but so that the amount which is the subject of the claim is set, so far as possible, against the company's liability for a more recent accounting period before a more remote one) and corporation tax shall, so far as may be required, be repaid accordingly.

In this subsection "surplus ACT", in relation to any accounting period of a company, means ACT which cannot be set against the company's liability to corporation tax for that period because the company has no income charged to corporation tax for that period or because of section 168(3).

(3) Where in the case of any accounting period of a company there is an amount of surplus ACT which has not been dealt with under subsection (2) above, that amount shall be treated for the purposes of this section (including any further application of this subsection) as if it were ACT paid in respect of distributions made by the company in the next accounting period.

(4) Effect shall be given to subsections (1) and (3) above as if on a claim in that behalf by the company and, for that purpose, accounts or other information submitted to the Commissioner in pursuance of section 30 containing particulars of ACT or surplus ACT which falls to be dealt with under those subsections shall be treated as a claim.

(5) For the purposes of this section the income of a company charged to corporation tax for any period shall be taken to be the amount of its income for that period on which corporation tax falls finally to be borne.

(6) Nothing in subsection (2) above shall be construed as authorizing any amount of ACT to be set off against a company's liability to income tax.

(7) This section has effect subject to the following provisions of this Chapter.

38 Set-off of company's ACT against subsidiary's liability to corporation tax

(1) Where a company ("the surrendering company") has paid an amount of ACT in respect of a dividend or dividends paid by it in an accounting period and the ACT has not been repaid, it may, on making a claim, surrender the benefit of the whole or any part of that amount-

(a) to any company which was a 51 per cent subsidiary of the surrendering company throughout that accounting period, or

(b) in such proportions as the surrendering company may determine, to any 2 or more companies which were 51 per cent subsidiaries of the surrendering company throughout that period.

(2) Subject to subsections (4) and (5) below, where the benefit of any amount of ACT ("the surrendered amount") is surrendered under this section to a subsidiary, then-

(a) if the ACT mentioned in subsection (1) above was paid in respect of one dividend only or of dividends all of which were paid on the same date, the subsidiary shall be treated for the purposes of section 37 as having paid an amount of ACT equal to the surrendered amount in respect of a distribution made by it on the date on which the dividend or dividends were paid;

(b) if the ACT mentioned in subsection (1) above was paid in respect of dividends paid on different dates, the subsidiary shall be treated for the purposes of section 37 as having paid an amount of ACT equal to the appropriate part of the surrendered amount in respect of a distribution made by it on each of those dates.

(3) For the purposes of paragraph (2)(b) above "the appropriate part of the surrendered amount", in relation to any distribution treated as made on the same date as that on which a dividend was paid, means such part of that amount as bears to the whole of it the same proportion as the amount of that dividend bears to the total amount of the dividends mentioned in that paragraph.

(4) ACT which a subsidiary is treated as having paid by virtue of subsection (2) above shall not be set against the subsidiary's liability to corporation tax under section 37(2), but in determining for the purposes of section 37(2) and (3) what (if any) amount of surplus ACT there is in any of its accounting periods, an amount so treated as having been paid shall be set against its liability to corporation tax before any ACT paid in respect of any distribution made by the subsidiary.

(5) ACT which a subsidiary is treated as having paid by virtue of subsection (2) above shall not be set against the subsidiary's liability to corporation tax for any accounting period in which, or in any part of which, it was not a 51 per cent subsidiary of the surrendering company unless throughout that period or part both companies were 51 per cent subsidiaries of a third company.

(6) Any claim under this section shall be made within six years after the end of the accounting period to which it relates and shall require the consent, notified to the Commissioner in such form as he may require, of the subsidiary or subsidiaries concerned.

(7) An amount of ACT which has been dealt with under section 37(2) shall not be available for the purposes of a claim under this section; and an amount of ACT the benefit of which has been surrendered under this section shall not be treated for the purposes of that section as ACT paid by the surrendering company.

(8) A payment made by a 51 per cent subsidiary to a surrendering company in pursuance of an agreement between them as respects the surrender of the benefit of an amount of ACT, being a payment not exceeding that amount-

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and

(b) shall not for any of the purposes of this Ordinance be regarded as a distribution.

(9) For the purposes of this section-

(a) references to a company apply only to bodies corporate resident in the Falkland Islands; and

(b) in determining whether one body corporate is a 51 per cent subsidiary of that other, that other shall be treated as not being the owner of any share capital-

(i) which it owns directly in a body corporate if a profit on the sale of the shares would be treated as a trading receipt of its trade; or

(ii) which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

(iii) which it owns directly or indirectly in a body corporate not resident in the Falkland Islands.

(10) Notwithstanding that, apart from this subsection, a company ("the subsidiary company") would at any time be a 51 per cent subsidiary of another company ("the parent company") for the purposes of this section, the subsidiary company shall not be treated at that time as a 51 per cent subsidiary for those purposes-

(a) if arrangements are in existence (whether in writing or not) by virtue of which any person has or could obtain, or any persons together have or could obtain, control of the subsidiary company but not of the parent company; and

(b) unless the following conditions are also fulfilled, namely-

(i) that the parent company is beneficially entitled to more than 50 per cent of any profits available for distribution to equity holders of the subsidiary company; and

(ii) that the parent company would be beneficially entitled to more than 50 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding up.

(11) Schedule 1 shall have effect for the purposes of subsection (10)(b) above, and in that Schedule "the relevant accounting period" means the accounting period current at the time in question.

39 . . .

[S. 9(3)(a)/Ord. 23/03/w.e.f. accounting periods beginning in or after 1/1/04.]

40 Set-off of losses against surplus of franked investment income

(1) Subject to section 153, where a company has a surplus of franked investment income for any accounting period-

(a) the company may, on making a claim for the purpose, require that the amount of the surplus must, for the purpose of setting off trading losses against income under section 128(1) be treated as if it were a like amount of income chargeable to corporation tax; and

(b) the company is entitled to have paid to it the amount of the tax credit comprised in the amount of franked investment income by which the surplus is so reduced.

[S. 6/Ord. 16/13/w.e.f. 1/1/14.]

(2) Where a company makes a claim under this section for any accounting period, the reduction falling to be made in income of that accounting period shall be made, as far as may be, in income chargeable to corporation tax rather than in the amount treated as income so chargeable under this section.

(3) Where-

(a) on a claim made under this section for any accounting period relief is given in respect of the whole or part of any loss incurred in a business; and

(b) in a later accounting period the franked payments made by the company exceed its franked investment income;

then (unless the company has ceased to carry on the business or to be within the charge to corporation tax in respect of it) the company shall, for the purposes of section 128(2), be treated as having, in the accounting period ending immediately before the beginning of the later accounting period mentioned in paragraph (b) above, incurred a loss equal to whichever is the lesser of-

(i) the excess referred to in paragraph (b) above; and

(ii) the amount in respect of which relief was given as mentioned in paragraph (a) above or so much of that amount as remains after deduction of any part of it dealt with under this subsection in -relation to an earlier accounting period.

(4) A claim under this section shall be made within the time limit that would, by virtue of section 128(6), be applicable in the case of a claim under section 128(1) in respect of the losses in question.

(5) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that accounting period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period; and for the purposes of subsection (3) above franked investment income which by virtue of section 39(4) cannot be used to frank distributions of a company shall be left out of account.

41 Set-off of loss brought forward

(1) Where a company has a surplus of franked investment income for any accounting period, the company, instead of or in addition to making a claim under section 40, may on making a claim for the purpose require that the surplus shall be taken into account for relief under section 128(2); and the following subsections shall have effect where the company makes a claim under this section for any accounting period.

(2) The amount to which the claim relates shall for the purposes of the claim be treated as trading income of the accounting period.

(3) The reduction falling to be made in trading income of an accounting period shall be made as far as possible in trading income chargeable to corporation tax rather than in the amount treated as trading income so chargeable under this section.

(4) Section 40(3) shall apply in relation to the claim.

(5) A claim under this section shall be made before the expiry of the period of six years from the end of the accounting period for which the claim is made.

(6) For the purposes of a claim under this section for any accounting period, the surplus of franked investment income for that period shall be calculated without regard to the part, if any, carried forward from an earlier accounting period.

42 Further provisions relating to claims under section 40 or 41

(1) Without prejudice to section 40(5) or 41(6), the surplus of franked investment income for an accounting period for which a claim is made under either of those sections shall be calculated without regard to any part of that surplus which, when the claim is made, has been used to frank distributions made by the company in a later accounting period.

(2) Where in consequence of a claim under section 40 or 41 for any accounting period a company is entitled to payment of a sum in respect of tax credit-

(a) an amount equal to that sum shall be deducted from any ACT which apart from this subsection would fall, under section 37, to be set against the company's liability to corporation tax for the next accounting period; and

(b) if that amount exceeds that ACT or there is no such ACT, that excess or that amount (as the case may be) shall be carried forward and similarly deducted in relation to the following accounting period and so on.

43 Calculation, etc., of ACT on change of ownership of company

(1) This section applies if-

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade or business carried on by the company; or

(b) at any time after the scale of the activities in a trade or business carried on by a company has become small or negligible, and before any considerable revival of the trade or business, there is a change in the ownership of the company.

(2) Sections 37, 39 and 44 to 48 shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods; and for that purpose the income of the company charged to corporation tax for the accounting period (as defined in section 37(5)) shall be apportioned between those parts.

(3) ACT paid by the company in respect of distributions made in an accounting period beginning before the change of ownership shall not be treated under section 37(3) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(4) ACT paid by the company in respect of distributions made in an accounting period ending after the change of ownership shall not be treated under section 37(2) as paid by it in respect of distributions made in an accounting period beginning before the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

(5) Sections 129(4), (7) and (8) and 130 shall apply also for the purposes of this section and as if in section 130(3) the reference to the benefit of the losses were a reference to the benefit of ACT.

44 Changes in rate of ACT and payment of ACT

(1) If ACT for any corporation tax year is charged otherwise than as it has been paid or assessed, the necessary adjustment shall be made by discharge or repayment of tax or by a further assessment.

(2) Subject to the following provisions of this section and sections 45 to 48, where a company makes a distribution in respect of which it is liable to pay ACT, the ACT shall be due and payable thirty days after the end of the calendar month in which the distribution is made, whether or not the ACT has been assessed, and the following provisions of this section shall have effect to determine the amount of ACT payable.

(3) Where subsection (2) above applies and the company has in that month made a franked payment, the company shall make a return to the Commissioner before the expiry of the period of thirty days following that month of-

(a) the franked payments made by it in that month; and

(b) any franked investment income received by it in that month,

and ACT shall be payable by the company for that month on an amount equal to the amount of the franked payments made in that month less the amount of any franked investment income received by it in that month.

(4) For the purposes of subsection (3) above the company may include in the amount of the franked investment income received by it in the month any franked investment income not previously set against franked payments made by the company before the beginning of the month in question, but this subsection shall not be taken to permit a company to include in any return under this section any payment made or income received before the company came within the charge to corporation tax.

(5) ACT in respect of franked payments required to be included in a return under this section shall be due at the time by which the return for that period is to be made, and ACT so due shall be payable without the making of any assessment.

[S. 7/Ord. 16/13/w.e.f. 1/1/14.]

((6) ACT which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made) if that tax, or any part of it, is not paid on or before the due date.

(7) If it appears to the Commissioner that there is a franked payment which ought to have been and has not been included in a return, or if the Commissioner is dissatisfied with any return, he may make an assessment on the company to the best of his judgment; and any ACT due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

45 . . .

[S. 9(3)(b)/Ord. 23/03/for accounting periods beginning on or after 1/1/04.]

46 . . .

[S. 9(3)(b)/Ord. 23/03/for accounting periods beginning on or after 1/1/04.]

47 . . .

[S. 9(2)(b)/Ord. 23/03/for any distribution or payment made on or after 1/1/04.]

48 Assessments and due date of ACT

(1) The enactments relating to corporation tax which make provision as to the time within which an assessment may be made, shall, so far as they refer or relate to the accounting period for which an assessment is made, or the accounting period to which an assessment relates, apply in relation to an assessment to ACT notwithstanding that the assessment may relate to a month or other period which is not an accounting period.

(2) ACT assessed on a company shall be due within fourteen days after the issue of the notice of assessment (unless due earlier under section 44(5)).

(3) Subsection (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when ACT is due under section 44(5).

(4) On the determination of an appeal against an assessment, any ACT overpaid shall be repaid.

(5) Where more than one amount of ACT is assessable on a company, it may all be included in one assessment if the ACT so included is all due on the same date (whether or not it is all assessable under the same provision).

Tax credits and Falkland Islands company distributions

49 Tax credits for certain recipients of qualifying distributions

(1) Where a company resident in the Falkland Islands makes a distribution and the person receiving the distribution is a person resident in the Falkland Islands, not being a company, the recipient of the distribution is entitled to a tax credit.

(2) Where a person is entitled to a tax credit under subsection (1), income tax must be charged on the gross amount of the distribution in accordance with the provisions of this Ordinance.

(3) The gross amount of the distribution must be calculated using the formula —

$$GA = \frac{D}{(1-LR)}$$

Where —

GA is the gross amount of the distribution;

D is the amount of the distribution actually received; and

LR is the lower rate of income tax, expressed as a decimal, for the year of assessment in which the distribution is made.

(4) A tax credit under subsection (1) is the difference between GA and D.

(5) A person entitled to a tax credit under subsection (1) must have their tax credit set off against the tax chargeable on that person's income for the year of assessment in which the distribution is made.

(6) If the tax credit exceeds the tax chargeable on that person's income for the year of assessment, the tax credit may not be –

(a) claimed by that person as a cash payment;

(b) set off against that person's future year of assessment; or

(c) carried back against the person's prior year of assessment.

(7) Where a distribution mentioned in subsection (1) is, or falls to be treated as, or under any provision of this Ordinance is deemed to be, the income of a person other than the recipient, that person is treated for the purposes of this section as receiving the distribution (and accordingly the question whether they are entitled to a tax credit in respect of it must be determined by reference to where the person, and not the actual recipient, is resident).

[S. 4/Ord. 8/21/c.i.f. 1/1/22 and has effect for the computation of chargeable income for years of assessment beginning on or after 1 January 2022.]

[S. 9(4)(a)/Ord. 23/03/effective for any distribution or payment made on or after 1/1/04 and s. 8/Ord. 16/13/w.e.f. 1/1/14.]

[S. 9(4)(b)/Ord. 23/03/for any distribution or payment made on or after 1/1/04.]

[S. 9(2)/Ord. 2/11/w.e.f. 1/1/11.]

[S. 9(3)/Ord. 2/11/w.e.f. 1/1/11.]

50 . . .

[S. 9(5)/Ord. 23/03/for any distribution or payment made on or after 1/1/04.]

51 . . .

[S. 9/Ord. 16/13/w.e.f. 1/1/14.] [S.R.&O. 14/2024/w.e.f. 31/07/2017]

52 Falkland Islands company distributions not chargeable to corporation tax

Except as otherwise provided by this Ordinance, corporation tax shall not be chargeable on distributions of a company resident in the Falkland Islands nor shall any such distribution be taken into account in computing income for corporation tax.

53 Tax credits for non-residents

(1) An individual who, having made a claim in that behalf, is entitled to relief under Chapter I of Part II by virtue of section 195(3) in respect of any year of assessment shall be entitled to a tax credit in respect of any distribution received by him in that year to the same extent as if he were resident in the Falkland Islands.

[S. 9(6)/Ord. 23/03/w.e.f. 1/1/04.]

(2) Where a distribution is income of, or of the government of, any sovereign power or of any international organization, that power, government or organization shall be entitled to a tax credit in respect of the distribution to the same extent as a recipient mentioned in section 49(1).

In this subsection "international organization" means an organization of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if in any proceedings a question arises whether a person is within this subsection, a certificate issued by or under the authority of the Governor stating any fact relevant to that question shall be conclusive evidence of that fact.

54 Taxation of certain recipients of distributions

Where in any year of assessment the income of any person, not being a company resident in the Falkland Islands, includes a distribution in respect of which that person is not entitled to a tax credit-

(a) an assessment shall not be made on that person in respect of income tax at the lower rate on the amount or value of the distribution;

(b) that person's liability under any assessment made in respect of income tax at a higher rate on the amount or value of the distribution or on any part of the distribution shall be reduced by a sum equal to income tax at the lower rate on so much of the distribution as is assessed at that higher rate; and

(c) the amount or value of the distribution shall be treated as income which is not chargeable at the lower rate.

55 Information relating to distributions

(1) A company which makes a distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

56 . . .

[S. 9(2)(a)/Ord. 23/03/for any distribution or payment made on or after 1/1/04.]

CHAPTER IV
MISCELLANEOUS PROVISIONS

57 Exemptions

(1) There shall be exempt from tax-

(a) the emoluments of the Governor;

(b) the income of any local authority in so far as such income is not derived from a business carried on by the local authority;

(c) the income of any ecclesiastical, charitable or educational institution or trust of a public character;

(d) the emoluments payable to members of the permanent Consular Services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;

(e) emoluments paid out of United Kingdom Government funds to a person serving in the armed forces;

[S. 6(2)(a)/Ord. 2/12/w.e.f. 1/1/12.]

(ea) emoluments paid out of United Kingdom Government funds to a person serving the United Kingdom Government in a civil capacity who is not excluded from this exemption by subsection (2A);

[S. 6(2)(b)/Ord. 2/12/w.e.f. 1/1/12.]

(f) wound and disability pensions granted to members of Her Majesty's Armed Forces;

(g) gratuities granted to members of Her Majesty's Armed Forces in respect of war services;

(h) in so far as relates to income received for the provision of services connected with the defence of the Falkland Islands, any person being an institution, corporation or contractor to Her Majesty's Government in the United Kingdom notified to the Commissioner by the Governor as being entitled to exemption under this paragraph;

[Not to apply in relation to accounting periods beginning on or after 1/1/04 - s. 6(6)(a)/Ord. 23/03.)]

(i) the income of any statutory or registered friendly society;

(j) any grant made from the public revenue of the Falkland Islands in respect of any person under the age of twenty-six years, who is receiving full-time instruction at a recognized educational establishment outside the Falkland Islands;

(k) the income of the Falkland Islands Development Corporation or any company wholly owned by the Falkland Islands Development Corporation;

(l) interest receivable in respect of each of the following-

(i) funds deposited in an interest-bearing account maintained at a bank or branch of a bank in the Falkland Islands;

(ii) funds deposited with a registered co-operative society;

(iii) funds held in the Falkland Landholdings Corporation Provident Fund; and

(iv) funds held in the Falkland Islands Company Ltd Provident Fund;

[S. 10(a)/Ord. 2/11/w.e.f. 1/1/11.]

(m) . . .;

[S. 10(2)/Ord. 13/09/w.e.f. 6/11/09.]

(n) any allowance paid to a public officer in addition to his salary which the Commissioner is satisfied is paid to that public officer in order to enable him to meet the increased expenses incurred or to be incurred by him and arising wholly or mainly by virtue of the fact that he is required to perform the duties of his office outside the Falkland Islands;

(o) . . .;

[S. 25(d)/Ord. 3/10/w.e.f. 1/1/11.]

(p) . . .;

[S. 6(6)(b)/Ord. 23/03/w.e.f. 1/1/04 and s. 10(a)/Ord. 16/13/w.e.f. 1/1/14.]

(q) payments made by way of bounty to-

(i) members of the Falkland Islands Defence Force;

(ii) reserve police officers in the Royal Falkland Islands Police; and

(iii) retained firefighters in the Falkland Islands Fire and Rescue Service;

[S. 10(b)/Ord. 2/11/w.e.f. 1/1/11.]

(r) in the case of an individual who during a 12 month period is present in the Falkland Islands for 45 days or less —

(i) income from employment in respect of any part of that period,

(ii) directors' emoluments in respect of any part of that period, and

(iii) any prescribed annual value, or other benefit, chargeable to income tax in respect of the individual's employment for any part of that period;

[S. 10(c)/Ord. 2/11/w.e.f. 1/1/11; S. 3(1)/Ord. 18/12/effective in relation to periods of 12 months ending on or after 1 January 2013 (but only in relation to income, emoluments or benefits accruing on or after that date); S. 6(a)/Ord. 10/20/effective in relation to periods of 12 months ending on or after 1 January 2022 (but only in relation to income, emoluments or benefits accruing on or after that date).]

(s) income from employment on board a fishing vessel of members of the crew of that vessel who are not resident in the Falkland Islands;

[S. 10(c)/Ord. 2/11/w.e.f. 1/1/11.]

(t) …

[S. 10(b)/Ord. 16/13/w.e.f. 1/1/14; S. 6(b)/Ord 10/20/w.e.f. 1/1/21;S.28/Sch. Ord7/23/w.e.f. 30.06.23.]

(u) any benefits provided to an employee as entertainment (hospitality) by the employer subject to the maximum annual expenditure not exceeding £100 for each employee.

[S. 10(b)/Ord. 16/13/w.e.f. 1/1/14.]

(v) any agricultural produce including meat received by a person employed in Camp from their employer's agricultural business in Camp to a retail value not exceeding £1,000 per year of assessment; and

[S. 6(c)/Ord. 10/20/w.e.f. 1/1/21]

(w) any agricultural produce including meat taken for the consumption of the business owner in Camp from their agricultural business in Camp to a retail value not exceeding £1,000 per year of assessment.

[S. 6(c)/Ord. 10/20/w.e.f. 1/1/21]

(2) Subsection (1)(c) above does not apply to any income derived by any such institution or trust as is mentioned in that paragraph from a business carried on by it unless the profits are applied solely to the purposes of the institution or trust and either-

(a) the business is carried on in the course of the actual carrying out of a primary purpose of the institution or trust; or

(b) the people working in the business are wholly or mainly the beneficiaries of the institution or trust.

(2A) A person is excluded from the exemption in subsection (1)(ea) if one or more of the following apply–

(a) the person was present in the Falkland Islands when either–

(i) engaged to serve in the Falkland Islands; or

(ii) posted to serve there; and

(b) the person had been present in the Falkland Islands within the three months before then; or

(c) in the opinion of the Commissioner for Taxation, the main reason why the person was absent from the Falkland Islands was to qualify for exemption under subsection (1)(ea).

[S. 6(3)/Ord. 2/12/w.e.f. 1/1/12.]

(2B) Subsection (2A) does not exclude a person from the exemption in subsection (1)(ea) if the person is present in the Falkland Islands in the course of service covered by that exemption when the person is either–

(a) re-engaged to continue serving in the Falkland Islands; or

(b) posted for a serve there for a further period.

[S. 6(3)/Ord. 2/12/w.e.f. 1/1/12.]

(3) The Governor may by proclamation published in the Gazette provide that interest payable on any loan charged on the public revenue of the Falkland Islands shall be exempt from tax, either generally or only in respect of interest payable to persons not resident in the Falkland Islands; and such interest shall as from the date and to the extent specified in the proclamation be exempt accordingly.

(4) Except where the context otherwise requires, nothing in this section shall be construed as exempting in the hands of the recipients any dividends, interest, bonuses, salaries or wages paid wholly or partly out of income which is exempt from tax under subsection (1).

57A Donations to charities[ii]

(1) Subject to the following provisions of this section, in computing a person's chargeable income for any period there shall, on a claim being made in that behalf by that person, be deducted from his income the amount of any charitable donation which he has made in that period and which is not deductible under section 58(1) or 97(1).

(2) In this section-

(a) "a charitable donation" means a donation to a registered charity that is-

(i) a donation in money; or

(ii) a donation in kind from a business.

[S. 11(2)/Ord. 2/11/w.e.f. 1/1/11.]

(b) "a registered charity" means-

(i) any body which is registered as a charity under the Charities Act 1960 as it applies in the Falkland Islands; and

(ii) any body of persons or trust the name of which appears on the approved list of charities; and

(c) "the approved list of charities" means the list for the time being approved by the Governor in accordance with section 57B.

(2A) The amount to be deducted for a donation in kind made by a business is-

(a) the cost to the business of the donation; or

(b) if it is lower, the value to the charity of what is donated.

[S. 11(3)/Ord. 2/11/w.e.f. 1/1/11.]

(3) ...

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(4) Any donation made to a body after 31st December 1997 shall not be deductible under subsection (1) unless it is made at a time when the body is a registered charity.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) A donation of less than £50.00 shall not be deductible under sub-section (1).

(6) A deduction under subsection (1) may only be made in computing a person's income after all other deductions and allowances (including loss relief) under this or any other Ordinance have been made, and a person's income shall not be reduced below zero by virtue of any such deduction.

(7) A person shall not be entitled under subsection (1) to deduct the amount of any charitable donation in computing his income for any period unless and until the Commissioner receives written evidence provided by the charity stating the total amount of the donations received in that period by that charity from that person.

[S. 4(1)/Ord. 26/98/w.e.f. 9/12/98 but applicable to donations made after 1/1/98.]

57B Approved list of charities

(1) The approved list of charities referred to in section 57A(2)(b)(ii) is a list of eligible charities, prepared and approved in accordance with the following provisions of this section.

(2) The Attorney General shall prepare a list of eligible charities and submit the list to the Governor for his approval; and the list as so approved and any approved amendments to the list shall be published in the Gazette.

(3) In this section "eligible charity" means any body of persons or trust established for charitable purposes only which is not registered under the Charities Act 1960 (as it applies in the Falkland Islands) and is not required to be so registered.

(4) Any eligible charity may apply to be included in the list approved under subsection (1), and any person may apply for the name of any eligible charity to be included in the list.

(5) The provisions of this section shall not be read as imposing any obligation on the Attorney General to include the name of any charity on the list in the absence of any application in that respect.

(6) The burden of establishing that a body as respects which an application has been made for its name to be included in the approved list is an eligible charity shall be on the person making the application.

(7) The Attorney General may from time to time submit amendments to the approved list to the Governor for his approval, and any reference in this section or section 57A to the approved list of charities is a reference to that list as so amended.

[S. 4(1)/Ord. 26/98/w.e.f. 9/12/98 but applicable to donations made after 1/1/98.]

58 Other allowable deductions

In computing a person's income for any period from an employment, all outgoings and expenses wholly, necessarily and exclusively incurred by him during that period in the production of that income may be deducted.

[S. 6(7)/Ord. 23/03/w.e.f. 1/1/04.]

58A Taxation of redundancy payments

(1) A redundancy payment received by any person shall be chargeable to tax under this section, but subject to and in accordance with the provisions of this section and sections 58B to 58C, and an amount chargeable to tax under this section shall be deemed to be income of that person chargeable for the year of assessment in which he receives the payment.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(2) In this section and sections 58B to 58C, "redundancy payment" means any payment not otherwise chargeable to tax which is received in connection with-

(a) the termination of a person's employment; or

(b) any change in the duties of or emoluments from a person's employment,

and includes any payment which is a redundancy payment within the meaning of the Employment Protection Ordinance.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(3) For the purposes of subsection (2) a payment made in consideration or in consequence of, or otherwise in connection with, the termination or change in the duties of or emoluments from a person's employment is a redundancy payment whether it-

(a) is made by the employer or former employer or by another person; or

(b) is made in pursuance of a legal obligation or not; or

(c) is received directly or indirectly-

(i) by the employee or former employee; or

(ii) by the spouse or any relative or dependant of the employee or former employee; or

(iii) by the personal representatives of the former employee.

(4) For the purposes of this section and sections 58B to 58C a payment which is made on behalf of, or to the order of, the employee or former employee (whether as mentioned in subsection (3)(c)(ii) or (iii) or otherwise) is treated as received by the employee or former employee.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) An amount chargeable to tax under this section shall be deemed to be a payment to which section 83(1) applies, made when the redundancy payment is received by the employee, and where the person paying the payment is not his employer, references in Part IV to the employer shall include references to that person.

(6) Where a redundancy payment within the meaning of the Employment Protection Ordinance is made in respect of employment wholly in a business carried on by the employer and within the charge to tax, then the payment shall (if not otherwise so deductible) be so deductible and if made after the discontinuance of the business shall, for the purpose of this subsection, be deemed to have been made on the last day on which the business was carried on.

(7) For the purposes of section 98 (restriction on deduction of emoluments before payment) a redundancy payment shall be deemed to be a relevant emolument.

(8) For the purposes of this section and sections 58B and 58C, a redundancy payment is treated as received when it is made.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(9) In this section and sections 58B to 58C "employment" includes an office and related expressions have a corresponding meaning.

[S. 2(2)/Ord. 13/99/w.e.f. 1/1/97; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

58B Information to be provided by the employer

(1) Where any redundancy payment is received by any employee in a year of assessment, the person by whom the payment is made shall give the Commissioner a certified copy of -

(a) all documents constituting the employee's contract of employment in respect of the termination of which or change in the duties or emoluments of which the redundancy payment is made; and

(b) all documents relating to the redundancy payment.

(2) The employer shall give the Commissioner a notice in writing containing the following information-

(a) the employee's full name and address;

(b) the dates on which his employment started and, in the case of a termination, ended;

(c) in the case of a change in the duties or emoluments of an employment, details of that change;

(d) the amount of the payment;

(e) the date on which the payment will be or has been received;

(f) the employee's pay to date in the tax year;

(g) the total tax deducted to date in the tax year; and

(h) in the case of a termination of employment, the amount of any other payment the employee will receive in respect of the termination of his employment and the dates when the employer proposes to make those payments.

(3) Any document or notice required to be given by subsection (1) or (2) shall be given within 30 days of the date on which the redundancy payment in question is received.

(4) A person shall not be required to include in any notice under subsection (2) any information which is included in any document given to the Commissioner under subsection (1) in respect of the same person and the same payment.

(5) In subsection (1) a "certified copy" means a copy certified by the person giving it to the Commissioner as being a true copy of the original.

(6) Any person who fails to comply with any requirement of subsection (1), (2) or (3) commits an offence and shall be liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

[S. 2(2)/Ord. 13/99/w.e.f. 1/1/97.]

58C Payments not exceeding £20,000 and other exemptions

(1) Subject to subsections (2) and (3), a redundancy payment received by any person shall not be taxable if and to the extent that its amount does not exceed £20,000

(2) This section does not apply in relation to any payment received by an employee in respect of the termination of an employment or change in duties or emoluments of an employment where-

(a) the employer in question is a company; and

(b) the employee either alone or together with persons connected with him beneficially owns at least 20 per cent of the ordinary share capital of that company.

(3) Redundancy payments received by the same person-

(a) in respect of the same employment; or

(b) in respect of different employments with the same employer or associated employers,

shall be aggregated and the £20,000 threshold shall apply to the aggregate amount.

(4) For the purposes of subsection (3)(b) employers are associated if on the date which is the relevant date in relation to any of the payments-

(a) one of them is under the control of the other; or

(b) one of them is under the control of a third person who controls or is under the control of the other on that or any other such date.

(5) In subsection (4)-

(a) any references to an employer, or to a person controlling or controlled by an employer, include the successors of the employer or person; and

(b) "the relevant date" means the date of the termination in question of employment, or of the change in question in the duties of or emoluments from employment.

(6) If payments are received in more than one year of assessment and subsection (3) applies, the £20,000 threshold shall be set against the amount of payments received in earlier years before those of later years.

(7) The £20,000 threshold shall be set against any cash payment as it is received.

(8) A redundancy payment received by any person shall not be taxable by virtue of section 58A if it is made-

(a) in connection with the termination of the employment by the death of the employee; or

(b) on account of injury to or disability of the employee; or

(c) in pursuance of any retirement payments scheme or personal pension arrangements which is or are approved for the purposes of Part III if-

(i) the payment is by way of compensation for loss of employment or for loss or diminution of emoluments, and the loss or diminution is due to ill-health; or

(ii) the payment is properly regarded as earned by past service.

[S. 2(2)/Ord. 13/99/w.e.f. 1/1/97.]

58D …

[S. 2(2)/Ord. 13/99/w.e.f. 1/1/97; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

59 Deductions not allowed

Subject to any contrary provision of this Ordinance, no deduction in respect of-

(a) domestic or private expenses;

(b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;

(c) any capital withdrawn or any sum employed or intended to be employed as capital;

(d) any capital employed in improvements;

(e) any sum recoverable under an insurance or contract of indemnity;

(f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;

(g) interest paid under section 11(2) or 33(1) and any civil penalty paid under this Ordinance;

(h) any amounts paid or payable in respect of tax imposed in a country or territory outside the Falkland Islands (but without prejudice to Part VIII); or

(i) any amount paid or payable under the Medical Services Tax Ordinance 2010.

[S. 51/Ord. 13/10/w.e.f. 1/1/11 (as corrected by S.R. & O. No. 30/10/w.e.f. 30/11/10) and Revision w.e.f. 31/07/2017 .]

shall be allowed in computing a person's chargeable income.

59A Corrupt payments

(1) In computing the chargeable income of any person under this Ordinance, no deduction shall be made for any expenditure incurred in making a payment the making or receipt of which constitutes the commission of an offence under the Prevention of Corruption Acts 1889 to 1916 (as those Acts apply in the Falkland Islands) or of the offence of corruption at common law.

(2) Subsection (1) has effect notwithstanding any other provision of this Ordinance or of any other Ordinance or Act of Parliament.

[S. 14/Ord. 23/02/w.e.f. 1/1/03.]

60 Partnerships

(1) In computing for any chargeable period the chargeable income of any person carrying on a business in partnership, his income from the partnership for any period shall be deemed to be the share in the income of the partnership to which he was entitled for that period (such income being ascertained in accordance with the provisions of this Ordinance).

(2) The partner's income from a partnership for a chargeable period shall be included-

(a) in the case of a corporate partner, in the company accounts delivered in accordance with section 30 for that period; or

(b) in any other case, in his return of income for that period.

(3) The precedent partner shall, when required by the Commissioner, make a return to the Commissioner-

(a) of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Ordinance; and

(b) of the names and addresses of the other partners in the firm together with the amount of the share of the partnership income to which each partner was entitled for the period to which the return relates.

(4) In this section "precedent partner" means in relation to any partnership, the partner who is resident or ordinarily resident in the Falkland Islands and-

(a) who is first named in the agreement of partnership; or

(b) if there is no agreement, whose name is or is the first in the usual name of the partnership,

but for the purposes of this definition any partner who would apart from this provision be the precedent partner shall be disregarded if he is not an active partner.

(5) In any case where none of the partners is resident or ordinarily resident in the Falkland Islands, the Commissioner may require the return to be made by any attorney, agent, manager or factor of the partnership who is resident in the Falkland Islands.

(6) Any person who fails to comply with a requirement of the Commissioner under subsection (3) or (5) above shall be liable-

(a) if the person is not more than three months late in complying with the requirements of subsection (3), to a penalty of £100; and

(b) in any other case, to a penalty of £200

61 …

[S.5. /Ord. 20/2022/w.e.f. 01/01/2023]

62 Company reconstructions without a change of ownership

(1) Where, on a company ("the predecessor") ceasing to carry on a business, another company ("the successor") begins to carry it on, and-

(a) on or at any time within two years after that event the business or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the business or such an interest belonged to at some time within a year before that event; and

(b) the business is for the whole of those three years carried on by a company which is within the charge to tax in respect of it,

then this Ordinance shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above, references to the business shall apply also to any other business of which the activities comprise the activities of the first mentioned business.

(2) The business shall not be treated as permanently discontinued nor a new business as set up and commenced for the purpose of the allowances and charges provided for by Chapter II of Part V (depreciation allowances) but-

(a) there shall be made to or on the successor in accordance with that Chapter all such allowances and charges as would, if the predecessor had continued to carry on the business, have fallen to be made to or on it; and

(b) the amount of any such allowance or charge shall be computed as if-

(i) the successor had been carrying on the business since the predecessor began to do so, and

(ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the business is made to the successor by the predecessor of any assets in use for the purpose of the business shall be treated as giving rise to any such allowance or charge).

(3) Subject to subsection (4) below, the successor shall be entitled to relief under section 128(2), as for a loss sustained by the successor in carrying on the business, for any amount for which the predecessor would have been entitled to claim relief if it had continued to carry on the business.

(4) Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

(5) Where the successor ceases to carry on the business within the three-year period referred to in subsection (1)(a) above and on its doing so a third company begins to carry on the business, then no relief shall be given to the predecessor by virtue of subsection (4) above by reference to that event, but, subject to that, subsections (2) to (4) above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that-

(a) in relation to the earlier event "successor" shall include the successor at either event; and

(b) in relation to the later event "predecessor" shall include the predecessor at either event,

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

(6) Where, on a company ceasing to carry on a business, another company begins to carry on the activities of the business as part of its business, then that part of the business carried on by the successor shall be treated for the purposes of this section as a separate business, if the effect of so treating it is that subsection (1) or (5) above has effect on that event in relation to that separate business.

(7) Where, on a company ceasing to carry on part of a business, another company begins to carry on the activities of that part as its business or part of its business, the predecessor shall for the purposes of this section be treated as having carried on that part of its business as a separate business if the effect of so treating it is that subsection (1) or (5) above has effect on that event in relation to that separate business.

(8) Where under subsection (6) or (7) above any activities of a company's business fall, on the company ceasing or beginning to carry them on, to be treated as a separate business, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.

(9) Where, by virtue of subsection (8) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall, for the purposes of the tax of all those companies, be determined by the Commissioner, after giving all of them an opportunity to make representations to him in writing and taking account of any such representations.

(10) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

63 Company reconstructions: supplemental

(1) For the purposes of section 62-

(a) a business carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the business;

(b) a business or interest in a business belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and

(c) a business or interest in a business belonging to a company shall, where the result of so doing is that subsection (1) or (5) of section 62 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.

(2) For the purposes of section 62, a business or interest in a business which belongs to a company engaged in carrying it on may be regarded-

(a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or

(b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

(3) For the purposes of subsection (2) above-

(a) references to ownership shall be construed as references to beneficial ownership;

(b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company,

whether directly or through another company or other companies, or partly directly and partly through another company or other companies;

(c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with section 207(5) to (10); and

(d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

(4) In determining, for the purposes of section 62, whether or to what extent a business belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose "relative" means husband, wife, ancestor, lineal descendant, brother or sister.

(5) For the purposes of section 62(4), relevant assets are-

(a) assets which were vested in the predecessor immediately before it ceased to carry on the business, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 62, were not by virtue of subsection (8) of that section apportioned to a business carried on by the company which was the successor on that application; and

(b) consideration given to the predecessor by the successor in respect of the change of company carrying on the business,

and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.

(6) For the purposes of section 62(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the business, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 62, were not by virtue of subsection (8) of that section apportioned to a business carried on by the company which was the successor on that application; but a liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(7) For the purposes of section 62(4)-

(a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the business; and

(b) the amount of liabilities shall be taken to be their amount at that time.

(8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.

(9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the business, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 62(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 62(4), be reduced by an amount equal to the amount of the liability.

(11) In this section "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.

(12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a business of lending money.

PART III
LIFE ASSURANCE, PENSIONS SCHEMES, ANNUITIES, ETC.

CHAPTER I
GENERAL PROVISIONS

64 "Approved schemes" and other definitions

(1) In this Part, except in so far as the context otherwise requires-

"administrator", in relation to any scheme, means the person resident in the Falkland Islands who is responsible for the management of the scheme.

"approved"-

(a) in relation to a scheme, means approved by the Commissioner in accordance with this Part; and

(b) in relation to arrangements, means made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme,

but does not refer to cases in which approval has been withdrawn;

"employee" includes-

(a) in relation to a company, any officer or director of the company and any other person taking part in the management of the affairs of the company, and

(b) past and future employees,

and related expressions shall be construed accordingly;

"the Falkland Islands Pensions Scheme" means the Falkland Islands Pensions Scheme established in accordance with the Falkland Islands Pensions Scheme Ordinance 1997;

"member", in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

"pension" includes an annuity;

"personal pension arrangements" means arrangements made by an individual in accordance with a personal pension scheme;

"personal pension scheme" means a scheme whose sole purpose is the provision of annuities or lump sums under arrangements made by individuals in accordance with the scheme but does not include the Falkland Islands Pensions Scheme;

[S. 2(1)(b)/Ord. 21/97/w.e.f. 1/1/98.]

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any

change in the nature of the service of the employee in question, but does not include any benefit payable solely on the disablement or death of the employee by accident occurring during his employment;

"retirement benefits scheme" means a scheme for the provision of -relevant benefits but does not include the Falkland Islands Pensions Scheme;

"scheme" includes a deed, agreement, series of agreements or other arrangements providing for relevant benefits for or in respect of one or more employees;

[S. 2(1)(a)/Ord. 21/97/w.e.f. 1/1/98.]

(2) For the purposes of this Part the cash equivalent of a benefit in kind is-

(a) the amount which would be the annual value of the benefit under section 8 if it were chargeable under that section; or

(b) if that benefit is not a prescribed benefit for the purposes of -section 8, such amount as, in the opinion of the Commissioner, may fairly and reasonably be taken to be the cash equivalent of the benefit,

treating, in either case, any sum made good by the recipient as made good by the employee.

(3) In this Part, any reference to the provision for employees of an employer of relevant benefits under a scheme includes a reference to provision made in pursuance of a contract made by the scheme administrator or the employer or the employee with another person, and any reference to payments under a scheme includes a reference to payments in accordance with such a contract.

(4) An application for approval under this Part shall be made in such form and manner and within such time limits as the Commissioner may -prescribe, and shall be accompanied by such information as may be so -prescribed.

(5) In sections 73(5), 74(3) and 80(1)(e), each reference to the Falkland Islands shall be construed as including a reference to a designated area.

65 Meaning of "relevant earnings"

(1) References in this Part to relevant earnings shall be construed in accordance with this section.

(2) In relation to premiums or contributions paid by an individual under personal pension arrangements, "relevant earnings" means-

(a) any earned income (including any amount which is deemed to be earned income) of his for the year of assessment in question; less

(b) the amount of any deductions, other than a deduction under this Part or under Chapter I of Part II in respect of the individual, which fall to be made from that earned income in computing for the purposes of income tax his chargeable income for that year,

but does not include any relevant benefit or any amount paid on account of a person's disablement.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(3) In relation to contributions made by an employee or his employer to a retirement benefits scheme, "relevant earnings" means the earned income of that employee arising from his employment with that employer.

(3A) In relation to any contribution made to the Falkland Islands Pensions Scheme by a member of that Scheme, "relevant earnings" means-

(a) any earned income (including any amount which is deemed to be earned income) of that member for the year of assessment in question; less

(b) the amount of any deductions, other than a deduction under this Part or under Chapter I of Part II in respect of the member, which fall to be made from that earned income in computing for the purposes of income tax his chargeable income for that year,

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

but does not include any relevant benefit or any amount paid on account of a person's disablement.

[S. 2(2)/Ord. 21/97/w.e.f. 1/1/98.]

(4) . . .

[S. 12/Ord. 2/11/w.e.f. 1/1/11.]

(5) Sums received by an individual on account of the termination of an employment or the alteration in any of the terms and conditions of his employment are not income within subsection (2) above.

65A Application of Part III to the Falkland Islands Pensions Scheme

(1) Sections 67, 70, 73, 74 and 77 shall apply in relation to the Falkland Islands Pensions Scheme as they apply in relation to an approved retirement benefits scheme, subject to the following provisions of this section.

(2) In the application of any provision of this Part to the Falkland Islands Pensions Scheme by virtue of subsection (1)-

(a) any reference to an employee shall be construed as a reference to any member of the Scheme, whether or not an employee; and

(b) any reference to the administrator of a retirement benefits scheme shall be construed as a reference to the Pensions Board established under the Falkland Islands Pensions Scheme Ordinance 1997

[S. 2(4)/Ord. 21/97/w.e.f. 1/1/98.]

CHAPTER II
TAX RELIEF

Life assurance premiums

66 . . .

[S. 6(8)/Ord. 23/03/w.e.f. 1/1/04.]

Retirement benefit schemes

67 Retirement benefit schemes

(1) This section has effect as respects-

(a) any approved retirement benefit scheme which is shown to the satisfaction of the Commissioner to be established under irrevocable trusts; or

(b) any other approved retirement benefits scheme as respects which the Commissioner, having regard to any special circumstances, directs that this section shall apply.

(2) In computing an employee's chargeable income for a year of assessment, any contribution paid by him under the scheme in the year preceding that year shall, on a claim, be allowed to be deducted from his relevant earnings.

(3) The amount allowed to be deducted by virtue of subsection (2) above in respect of contributions paid by an employee in any year (whether under a single scheme or under two or more schemes) shall not exceed 20 per cent of his relevant earnings for that year.

(4) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of the scheme shall not be chargeable to income tax (if it otherwise would be).

(5) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Commissioner is satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(6) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Commissioner is satisfied that, the underwriting commissions are applied for the purposes of the schemes and would, but for this subsection, be chargeable to tax otherwise than as trading income.

(7) Any sum paid by an employer by way of contribution under the scheme shall, for the purposes of income tax or corporation tax, be allowed to be deducted as an expense incurred in the chargeable period in which the sum is paid.

(8) The amount of an employer's contributions in respect of any employee which may be deducted under sub-section (7) above shall not exceed-

(a) in the case of an ordinary annual contribution, 35 per cent of the employee's relevant earnings for the chargeable period in question;

(b) in the case of any other contribution-

(i) £25,000; or

(ii) 35 per cent of the aggregate of employee's relevant earnings for that chargeable period and the preceding six chargeable periods,

whichever is the lower.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

Personal pension schemes

68 Members' contributions, and payments under schemes

(1) Where contributions are paid in any year by an individual under approved personal pension arrangements made by him then, subject to the provisions of this Part-

(a) in computing his chargeable income for the year of assessment following that year an amount equal to the aggregate of those contributions or to so much of that aggregate as does not exceed the maximum permitted deduction for that year shall be deducted from any relevant earnings of his; and

(b) in so far as the amount of the contributions paid in that year (aggregated with any amounts carried forward under this provision from an earlier year) exceeds the maximum permitted deduction for that year, the excess shall be carried forward and treated as if it were a contribution paid by the individual under the arrangements in the next year.

(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year means the lesser of-

(a) £15,000; or

[S. 13/Ord. 2/11/w.e.f. 1/1/11.]

(b) an amount equal to 20 per cent of his relevant earnings in that year,

less an amount equal to the aggregate of any contributions made by his employer (or employers) in that year.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(3) A lump sum paid to a person (whether on retirement or otherwise) in pursuance of approved personal pension arrangements shall not be chargeable to income tax (if it otherwise would be).

(4) Where relief under subsection (1) above for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under this section for that or any subsequent year as are appropriate.

(5) Without prejudice to subsection (1)(b) above, where a person makes contributions under an approved retirement benefits scheme or schemes and under approved personal pension arrangements in any year, the aggregate of the amounts he may deduct under this section and section 67 in respect of those contributions shall not exceed an amount equal to A minus B where-

A is equal to 20 per cent of his relevant earnings in that year (calculated for the purposes of this section); and

B is the aggregate amount of any contributions made by his employer (or employers) in that year under approved personal pension arrangements.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(6) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(7) Where relief under this section is claimed and allowed for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of this Ordinance for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

69 Employer's contributions

(1) Contributions paid by an employer must not be regarded as remuneration of the employee for the purposes of this Ordinance where those contributions are paid by an employer-

(a) under approved personal pension arrangements made by the employee; or

(b) under approved retirement benefits schemes.

(2) Subject to the provisions of this section, tax must be charged on any repayment to an employee during the employee's lifetime of any contributions referred to under subsection (1) (including interest on contributions, if any) if the repayment is made under a scheme which is or has at any time been an approved scheme within section 67 or under an arrangement which is or has at any time been an approved arrangement under section 68.

(3) Where any repayment is chargeable to tax under this section-

(a) it must be added to the chargeable income of the employee for the year of assessment following the year in which the payment is made; or

(b) if the employee elects, amounts equal to the contributions (if any) made in the year of assessment in which the repayment is made and in each of the preceding six years must be added to the income of the employee in each of those years and charged to tax accordingly, and if the repayment exceeds the aggregate of those amounts an amount equal to the excess must be added to the employee's chargeable income for the year following the year in which the repayment is made.

(4) An election under subsection (3) may not be made more than two years after the end of the year in which the payment is made, and all adjustments must be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(5) Subsection (2) does not apply in relation to a contribution made after the scheme or the arrangement ceases to be an exempt approved scheme or an exempt approved arrangement (unless it again becomes an approved scheme within section 67 or an approved arrangement under section 68).

(6) This section does not apply where the employee's employment was carried on outside the Falkland Islands.

[S. 11/Ord. 16/13/w.e.f. 1/1/14.]

Carry-forward of relief

70 Carry-forward of relief

(1) Where-

(a) an individual's chargeable income of any year includes relevant earnings from any business or employment carried on or held by him; and

(b) there is an amount of unused relief for the year of assessment following that year,

relief may be given under this Part up to the amount of the unused relief, in respect of so much of any contributions paid by him under an approved scheme in any of the six years following that year as exceeds the amount permitted to be deducted for that year under this Part.

(2) In this section, any reference to an amount of unused relief for any year of assessment is to an amount which could have been deducted from the individual's relevant earnings under this Part if-

(a) the individual had paid contributions under an approved scheme in the year preceding that year; or

(b) any such contributions paid by him in that preceding year had been greater.

(3) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.

(4) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than six years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment-

(a) that amount shall not be available for giving relief by virtue of this section for any of the six years following that year; but

(b) the individual may, within the period of six months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be given, up to that amount, in respect of so much of any contributions paid by him under an approved scheme within that period as exceeds the amount permitted to be deducted under this Part from his income for the year in which they are paid,

and to the extent to which relief in respect of any contributions is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(5) In this section, "a relevant assessment to tax" means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings.

[S. 12/Ord. 16/13/w.e.f. 1/1/14.]

CHAPTER III
CHARGE TO TAX IN CERTAIN CASES

Retirement benefit schemes

71 Non-approved schemes: payments by employers

(1) Subject to the provisions of this Chapter, where, pursuant to a retirement benefits scheme within subsection (2) below, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for any employee of that employer, then (whether or not the accrual of the benefits is dependent on any contingency) the sum paid, if not otherwise chargeable to income tax as income of the employee, is to be deemed for the purposes of income tax to be income of that employee for that year of assessment and assessable to tax accordingly.

[S. 13/Ord. 16/13/w.e.f. 1/1/14.]

(2) Subsection (1) above applies to any retirement benefits scheme other than a scheme for the time being approved for the purposes of this Part or a scheme set up by a government outside the Falkland Islands for the benefit, or primarily for the benefit, of its employees.

(3) Where the employer pays any sum as mentioned in subsection (1) above in relation to more than one employee, the sum so paid shall, for the purpose of that subsection, be apportioned among those employees by reference to the separate sums which would have had to be paid to secure the separate benefits to be provided for them respectively, and the part of the sum apportioned to each of them shall be deemed for that purpose to have been paid separately in relation to that one of them.

(4) Any reference in this section to the provision for an employee of relevant benefits includes a reference to the provision of benefits payable to that employee's wife or widow, children, dependants or personal representatives.

72 Non-approved schemes: taxation of benefits received

(1) Where in any chargeable period a person receives a benefit provided under a retirement benefits scheme to which section 71(1) applies, tax shall be charged in accordance with the provisions of this section.

(2) The recipient of the benefit shall be charged to tax for that period in an amount determined in accordance with subsection (3) below.

(3) The amount to be charged to tax is-

(a) in the case of a cash benefit, the amount received; and

(b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(4) In any case where the benefit is chargeable to income tax under this section and under another provision of this Ordinance-

(a) if the amount chargeable to income tax apart from this section is less than the amount which would be chargeable to tax under this -section, the amount chargeable to tax under this section shall be reduced by the amount chargeable to tax apart from this section; and

(b) if paragraph (a) does not apply, tax shall not be charged under this section in the case of the benefit.

(5) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum-

(a) which is deemed to be the income of a person by virtue of section 71(1); and

(b) in respect of which that person has been assessed to tax,

and for this purpose the provision of a benefit shall be presumed not to be attributable to the payment of such a sum unless the contrary is shown.

73 Repayment of employees' contributions

(1) Subject to the provisions of this section, tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the repayment is made under a scheme which is or has at any time been an approved scheme within section 67.

(2) Where any repayment is chargeable to tax under this section-

(a) it shall be added to the chargeable income of the employee for the year of assessment following the year in which the payment is made; or

(b) if the employee elects, amounts equal to the contributions (if any) made in the year of assessment in which the repayment is made and in each of the preceding six years shall be added to the income of the employee in each of those years and charged to tax accordingly, and if the repayment exceeds the aggregate of those amounts an amount equal to the excess shall be added to his chargeable income for the year following the year in which the repayment is made.

(3) An election under subsection (2) above may not be made more than two years after the end of the year in which the payment is made, and all adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(4) Subsection (1) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an approved scheme within section 67).

(5) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

74 Commutation of pension

(1) Where a retirement benefits scheme which is or has at any time been an approved scheme contains a rule allowing —

(a) a single payment in commutation of the whole or part of the accrued value of an employee's pension, and any pension is commuted, under the rule, income tax is charged on the amount by which the sum receivable exceeds one quarter of the accrued value of the pension entitlement at the time the payment is made; or

(b) a payment in commutation of the whole or part of the accrued value of an employee's pension by instalments, and any pension is commuted, under the rule, the first instalment up to a maximum of one quarter of the total accrued value of the pension entitlement is not chargeable to income tax but to the extent that any amount withdrawn in the first or subsequent instalments exceeds in total one quarter of the accrued value of the pension entitlement, the payment is chargeable to income tax at the time the payment is made.

[S. 11/Ord. 19/2022/w.e.f. 01/01/2023]

(1A) Sections 89 (payments on account of tax: application) and 90 (repayment of sums deducted) apply to any sums deducted in accordance with this section.

[S. 11/Ord. 19/2022/w.e.f. 01/01/2023]

(2) Where any amount is chargeable to tax under this section the administrator of the scheme shall be charged to income tax on that amount at the rate which, at the time the sum becomes receivable, is the lower rate.

[S. 8/Ord. 23/03/w.e.f. 1/1/04 and s. 14/Ord. 16/13/w.e.f. 1/1/14.]

(2A) The administrator shall account to the Commissioner for any tax deducted under subsection (2) in accordance with such rules as may be prescribed, and the employee shall not be entitled to recover any such amount of tax from the administrator.

[S. 8/Ord. 23/03/w.e.f. 1/1/04.]

(2B) Where the whole or any part of any sum is chargeable to tax under subsection (1), that sum shall be treated as income for the purposes of section 8(f).

[S. 8/Ord. 23/03/w.e.f. 1/1/04; S. 11/Ord. 19/2022/w.e.f. 01/01/2023]

(3) This section shall not apply where the employee's employment was carried on outside the Falkland Islands.

(4) In applying subsection (1) above-

(a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Commissioner in applying section 80; and

(b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

75 Payments out of surplus funds of retirement benefits schemes

(1) Any payment made to or for the benefit of an employee or to his personal representatives by way of a return of surplus funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 67 shall be treated as income of that employee for the year in which it is made (whether or not he is the recipient).

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, an amount equal to the cash equivalent of whatever is transferred shall be treated as income of the employee for the year in which the transfer took place.

76 Unauthorized payments under retirement benefit schemes to or for employees

(1) In any case where-

(a) a payment is made to or for the benefit of an employee, otherwise than in course of payment of a pension; and

(b) the payment is made out of funds which are held for the purposes of a retirement benefit scheme which is an approved scheme; and

(c) the payment is not expressly authorized by the rules of the scheme,

the employee (whether or not he is the recipient of the payment) shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) Any payment chargeable to tax under this section shall not be chargeable to tax under section 73 or 74.

(3) References in this section to any payment include references to any transfer of assets or other transfer of money's worth.

77 Payments to employers

(1) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an approved scheme within section 67 then-

(a) if the scheme relates to a business carried on by the employer, the payment shall be treated for the purposes of the enactments relating to income tax or corporation tax as a receipt of that business receivable when the payment falls due or on the last day on which the business is carried on by the employer, whichever is the earlier;

(b) if the scheme does not relate to such a business, the employer shall be charged to tax on the amount of the payment as the income of the employer.

This subsection shall not apply to a payment which fell due before the scheme became an approved scheme within section 67.

(2) Subsection (1) above shall apply to a transfer of assets or money's worth as it applies to a payment but in the case of any such transfer, the value of whatever is transferred shall be taken to be equal to its cash equivalent.

Personal pension schemes

78 Unauthorized payments

(1) Where any payment within subsection (2) below is made-

(a) out of funds which are or have been held for the purposes of a personal pension scheme which is or has at any time been approved; and

(b) to or for the benefit of an individual who has made personal pension arrangements in accordance with the scheme,

that individual, whether or not he is the recipient of the payment, shall be chargeable to tax on the amount of the payment for the year of assessment in which the payment is made.

(2) A payment is within this subsection if-

(a) it is not expressly authorized by the rules of the scheme; or

(b) it is made at a time when the scheme or the arrangements are not approved and it would not have been expressly authorized by the rules of the scheme or by the arrangements when the scheme, or as the case may be the arrangements, were last so approved.

(3) This section applies to a transfer of assets or other transfer of money's worth as it applies to a payment, and in relation to such a transfer the reference in subsection (1) above to the amount of the payment shall be read as a reference to the value of the transfer.

79 Contributions under unapproved personal pension arrangements

Where contributions are paid by an employer under personal pension arrangements made by his employee then, if those arrangements are not approved arrangements and the contributions are not otherwise chargeable to income tax as income of the employee, the contributions shall be regarded for all the purposes of income tax as emoluments of the employment chargeable to income tax.

CHAPTER IV
APPROVAL OF SCHEMES

Retirement benefit schemes

80 Conditions for approval of retirement benefit schemes

(1) Subject to subsections (2) and (3) below, the Commissioner shall not approve any retirement benefits scheme for the purposes of this Part unless the scheme satisfies all of the following conditions-

(a) that the scheme is bona fide established for the sole purpose of providing relevant benefits in respect of service as an employee, being benefits payable to the employee or to the widow, widower, children or dependants or personal representatives of the employee;

(b) that the scheme is recognized by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;

(c) that there is a person resident in the Falkland Islands who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Part;

(d) that the employer is a contributor to the scheme; and

(e) that the scheme is established in connection with some trade or undertaking carried on in the Falkland Islands.

(2) The Commissioner shall not approve any retirement benefits scheme which provides for a lump sum payment on the death of a member if the lump sum exceeds the greater of the following amounts-

(a) £100,000; or

(b) an amount equal to four times the annual remuneration of the member at the time of his retirement or, if he dies before retirement, at the time of his death.

(3) The conditions set out in subsections (1) and (2) above are referred to below as "the prescribed conditions".

(4) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) If in the opinion of the Commissioner the facts concerning any scheme or its administration cease to warrant the continuance of his approval of the scheme, he may at any time by notice to the administrator withdraw his approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of his approval), as may be specified in the notice.

(6) Where an alteration has been made in a retirement benefits scheme, any approval given as regards the scheme before the alteration shall not apply after the date of the alteration unless the alteration has been approved by the Commissioner.

(7) Subsections (8) to (10) below apply where the Commissioner is considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with-

(a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Part; and

(b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Commissioner in order for him to decide whether to give approval for the purposes of this Part.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

Personal pension schemes

81 Requirements relating to contributions

(1) The Commissioner shall not approve a personal pension scheme which permits the acceptance of contributions other than-

(a) contributions by members;

(b) contributions by employers of members.

(2) The Commissioner shall not approve a scheme unless it makes provision for ensuring-

(a) that the aggregate of contributions made by a member and by his employer in a year of assessment does not exceed the lesser of-

(i) £15,000, or

[S. 14/Ord. 2/11/w.e.f. 1/1/11.]

(ii) an amount equal to 20 per cent of the member's relevant earnings in that year; and

[S. 15/Ord. 23/03/w.e.f. 1/1/03; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(b) that any excess is repaid to the member to the extent of his contributions and otherwise is repaid to the employer.

[S. 15/Ord. 23/03/w.e.f. 1/1/03.]

CHAPTER V
TRANSITIONAL PROVISIONS

82 Commissioner's discretion to allow continuation of existing relief

(1) The Commissioner may if he thinks fit permit relief from tax to be given in relation to-

(a) . . .

(b) contributions made after 1st January 1994 under schemes for the provision of relevant benefits to or in respect of persons who were members of the scheme before that date,

as if this Ordinance, the Taxes (Amendment) Ordinance 1996 and the Taxes Ordinance 1994 had not been enacted.

(2) If the Commissioner so directs in relation to any particular approved personal pension arrangements which were approved before 21st June 1996, this Part shall apply in relation to those arrangements-

(a) with the substitution for section 68(2) of the following-

"(2) For the purposes of subsection (1) above, the maximum permitted deduction, in relation to any contributions paid by an individual in a year, means an amount equal to 35 per cent of his relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the individual for that year";

(b) with the substitution for section 68(5) of the following-

"(5) In any case where a person is entitled to relief for any year of assessment under subsection (1) above and to relief under section 67, a deduction shall not be allowed under this section in so far as the aggregate of the amounts claimed under this section and that section exceeds the aggregate of an amount equal to 20 per cent of his relevant earnings for the purposes of that section and an amount equal to 35 per cent of his relevant earnings for the purposes of this section less those relevant earnings."; and

(c) with the substitution for section 81(2)(a) of the following-

"(a) that the aggregate of contributions made by an employee and by his employer in a year of assessment does not exceed 50 per cent of the employee's relevant earnings in that year or such greater amount as the Commissioner may agree in writing with the employee for that year; and".

PART IV
PAYMENTS ON ACCOUNT OF TAX BY EMPLOYEES

83 Amounts to be deducted from earned income, etc.

(1) Subject to subsections (2) to (4) below, every person who makes a payment to which this subsection applies to an employee or former employee of his in any year of assessment shall-

(a) before making the payment, deduct from the payment such sum as he is required to deduct by the POAT regulations; and

(b) account to the Commissioner for all sums so deducted in the manner and at the time or times required by the POAT regulations.

(2) Subject to subsection (4) below, subsection (1) above applies to any payment of any sum which is earned income of the employee or former employee but only in respect of sums paid by an employer to any of his employees exclusively related to and arising out of a contract of service or expired contract of service (in writing or not) between the employer and the employee, whether paid by way of remuneration or otherwise.

(3) No deduction is required to be made from any payment of any pension or annuity (voluntary or otherwise) by virtue of subsection (1) above unless the person making the payment has reason to believe that the total amount of such payments when aggregated with other earned income paid by him or any other person on his behalf to the recipient will in the year in question exceed £4,400 or such other higher amount prescribed by the POAT regulations.

(4) Subsection (1) above does not apply in relation to any pension or annuity paid by a person not resident in the Falkland Islands (whether or not any part of that pension is paid in or subsequently transferred to the Falkland Islands).

84 Payments by intermediaries or to employees of non-resident employers

(1) Subject to subsection (2) below, where-

(a) a payment of or on account of assessable income of an employee is made by an intermediary of his employer; and

(b) section 83(1) would have applied to it if the payment had been made by the employer,

then for the purposes of this Part the employer shall be deemed to have made that payment to the employee at the time it was made by the intermediary.

(2) The employer shall not be required to make a deduction under subsection (1) above if and to the extent that the intermediary (whether or not he is a person to whom section 83 and the POAT regulations apply) makes a deduction from the payment he makes and accounts for it in accordance with the POAT regulations.

(3) This subsection applies where-

(a) an employee during any period works for a person ("the relevant person") who is not his employer;

(b) any payment of, or on account of, assessable income of the employee in respect of work done in that period is made by a person who is the employer or an intermediary of the employer;

(c) the POAT regulations do not apply to the person making the payment or, if he makes the payment as an intermediary of the employer, the employer; and

(d) a deduction is not made or accounted for in accordance with this Part by the person making the payment or, if he makes the payment as an intermediary of the employer, the employer.

(4) Where subsection (3) above applies, for the purposes of this Part-

(a) the payment of assessable income shall be deemed to have been made by the relevant person; and

(b) the relevant person shall be deemed to be the employer of the employee,

and accordingly the payment shall be treated as falling within section 83(2).

(5) Where a payment within subsection (1)(a) or (3)(b) ("a section 84 payment") is deemed to be made by any person-

(a) any deduction required to be made by the POAT regulations shall be made from any payment he actually makes of or on account of assessable income of the person to whom that section 84 payment is made; or

(b) if the amount of any payment actually made is less than the amount of the deduction required to be made, he shall account to the Commissioner in accordance with the

POAT regulations for an amount equal to the amount of the deduction which he is unable to make.

(6) POAT regulations may make provision-

(a) with respect to the time when any section 84 payment (or description of section 84 payment) is to be treated as having been made;

(b) applying (with or without modifications) any specified provisions of the regulations for the time being in force in relation to deductions from actual payments to amounts accounted for in respect of any section 84 payments;

(c) with respect to the collection and recovery of amounts accounted for in respect of section 84 payments.

85 Non-resident employees, etc.

(1) This section applies in relation to an employee in a year only if-

(a) he is not resident or, if resident, not ordinarily resident in the Falkland Islands in that year; and

(b) he works or will work in the Falkland Islands and also works or is likely to work outside the Falkland Islands in that year.

Any reference in this subsection to a person working in the Falkland Islands includes a reference to a person working in any designated area.

(2) Where in relation to any year it appears to the Commissioner at any time that-

(a) some of the emoluments of an employee to whom this section applies are payable in respect of duties performed in the Falkland Islands during a year in which he is not resident, or if resident not ordinarily resident, in the Falkland Islands; but

(b) a proportion of the income, which at that time is unascertainable, may prove not to be assessable,

the Commissioner may, on an application made by the employer, give a direction determining what proportion of any payment made in that year of, or on account of, income of the employee shall be treated for the purposes of this Part as a payment of assessable income of the employee.

(3) An application for a direction under subsection (2) above shall provide such information as is available and is relevant to the giving of the direction.

(4) A direction under subsection (2) above-

(a) shall specify the employee to whom and the year to which it relates;

(b) shall be given by notice to the employer; and

(c) may be withdrawn by notice to the employer by a date specified in the notice, not being earlier than 30 days from the date on which the notice of withdrawal is given.

(5) The employer may designate a person to exercise his functions under subsections (2) and (4) above, and in any case where a person has been so designated any reference in this section to the employer (except this subsection) shall be read as a reference to that person.

(6) Where-

(a) a direction under subsection (2) above has effect in relation to an employee to whom this section applies; and

(b) a payment of, or on account of, the income of the employee is made in the year to which the direction relates,

the proportion of the payment determined in accordance with the direction shall be treated for the purposes of this Part as a payment to which section 83(1) applies.

(7) Where in any year-

(a) no direction under subsection (2) above has effect in relation to an employee to whom this section applies; and

(b) any payment is made of, or on account of, the income of the employee,

the entire payment shall be treated for the purposes of this Part as a payment to which section 83(1) applies.

86 Mobile workforce

(1) Where it appears to the Commissioner-

(a) that one person ("the contractor") has entered into or is likely to enter into an agreement that any of his employees shall in any period work for, but not as employees of, another person ("the relevant person"); and

(b) that payments of, or on account of, assessable income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor; and

(c) that section 83(1) would apply on the making of such payments but it is likely that deductions will not be made or accounted for in accordance with the POAT regulations,

he may give a direction under subsection (2) below to the relevant person.

(2) A direction under this subsection is a direction, given by notice, that if-

(a) any employees of the contractor work in any period for, but not as employees of, the relevant person; and

(b) any payment is made by the relevant person in respect of work done by the employees in that period,

the relevant person shall make deductions in accordance with the notice.

(3) A direction under subsection (2) above-

(a) shall specify the relevant person and the contractor to whom it relates; and

(b) may at any time be withdrawn by a further notice to the relevant person.

(4) The Commissioner shall take such steps as are reasonably practicable to ensure that the contractor is supplied with a copy of any direction or notice given under subsection (2) or (3) above which relates to him.

87 Supplementary provisions

(1) For the purposes of this Part-

(a) a person who is a public officer is deemed to be an employee employed under a contract of service with the Crown; and

(b) a director of a company is an employee of that company;

and any reference in this Part to an employee, an employer, employment or a contract of service shall be construed accordingly.

(2) For the purposes of this Part, any payment to which this Part would apply if made to the employee in question shall be deemed to have been paid to the employee if it is paid to another person by the employer at the request or by authority of the employee or by order of any court, whether by reason of the employee's incapacity or otherwise.

(3) In any case where a person who was an employee of an employer has died and the employer makes a payment of a pension or annuity or any other payment to the deceased's widow, widower, personal representative or dependants, this Part (apart from this subsection) shall have effect as if any reference to an employee were or included (as the context requires) a reference to the widow, widower, personal representative or dependants of the deceased person.

(4) Any contract, agreement or arrangement whatsoever between any person on whom any obligation is imposed under this Part and any other person (whether or not also under such an obligation) which is inconsistent with that obligation (or obligations as the case may be) shall, to the extent of that inconsistency, be void.

(5) Any sum required by the POAT regulations to be deducted from any payment, but not paid to the Commissioner as required by such regulations, shall be recoverable from the employer by the Commissioner as a civil debt; and the Senior Magistrate shall have jurisdiction to try and determine any action brought by the Commissioner by virtue of this subsection and to make any order that the Supreme Court could have made in civil proceedings in that court in respect of that sum, and notwithstanding that the amount claimed would otherwise be beyond his jurisdiction.

(6) Without prejudice to section 88(2), in any case where-

(a) an employer has failed to comply with any requirement of the POAT regulations to account to the Commissioner for any sum on account of the liability of an employee of his to income tax; and

(b) the Commissioner has not recovered that sum from the employer under subsection (5) above or section 92 or otherwise,

then subsection (5) does not have effect to prevent the Commissioner from recovering any such income tax as is mentioned in paragraph (a).

(7) Any sum not paid to the Commissioner in accordance with the POAT regulations shall bear interest in favour of the Crown on the sum for the time being remaining unpaid, before as well as after any judgment, at the rate of 3 per cent per annum over the base lending rate, and subsection (5) above shall also apply in respect of such interest.

(8) Nothing in subsection (5) shall operate so as to prevent proceedings being brought in the Supreme Court, but if so brought subsection (7) shall apply in respect of interest claimed.

88 Liability of employer with respect to sums deducted, etc.

(1) It shall be a defence to any action brought by an employee against his employer to recover any sum which the employer is obliged to deduct under this Part for the employer to show that he was obliged to deduct that sum, and a certificate of the Commissioner that the employer was so obliged to deduct any sum shall, as between employer and employee, be conclusive in accordance with its tenor.

(2) Subject to subsection (3), as between an employee and the Commissioner or the Crown, any deduction made under this Part shall be deemed to have been paid to the Commissioner by the employee on account of his liability to income tax, and irrespective of whether the deduction has been accounted for to the Commissioner or not.

(3) Subject to subsections (4) and (5) below, subsection (2) above shall apply only in relation to any deduction made in respect of an employee by his employer where the employer-

(a) is resident in the Falkland Islands or trading through a branch or agency in the Falkland Islands at the time the deduction is made; and

(b) fails to account to the Commissioner for the deduction in accordance with the POAT regulations or otherwise; and

(c) before the end of the second year of assessment following the year in which the deduction was made, is either adjudicated bankrupt or (in the case of a company) is insolvent and has had a winding-up order made in respect of it.

(4) Subsection (2) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (2) shall not apply.

(5) Subsection (3) above shall not apply in relation to any deduction as respects which the Commissioner notifies the employer and the employee that the Commissioner has determined that subsection (3) shall not apply.

(6) If any sum deducted in accordance with this Part is lost, mislaid or destroyed before it is received by the Commissioner, the person liable to make the deduction and not the Commissioner or the Crown shall bear the loss; and accordingly that person in such an event remains liable to pay the same to the Commissioner.

(7) An employer shall within seven days of the expiration or determination of an employee's contract of service, or, if the employee is a former employee paid a pension or annuity, or the employee continues in the employer's employment, not later than 31st January after the relevant date, furnish to the employee a certificate of the total amount deducted under this Part up to the relevant date, and shall send a copy of the certificate to the Commissioner.

[S. 2(1)/Ord. 22/04/w.e.f. 1/1/05.]

(8) The certificate referred to in subsection (7) shall contain the following information-

(a) the name of the employer and his principal place of business in the Falkland Islands or, if he has no place of business in the Falkland Islands, outside the Falkland Islands;

(b) the full name of the employee and, if known, his address;

(c) the aggregate amount of all the income, in money, gross of all deductions, of the employee under that employer during the year in question or (where appropriate) up to the date of the certificate; and

(d) the aggregate amount of deductions from that income made by that employer during the year in question under this Part.

(9) In subsections (7) and (8), "relevant date" means the date of determination or expiration of the employee's contract of service in the year in question or, in the case of a contract of service which continues thereafter, 31st December in that year.

89 Payments on account of tax: application

(1) For the avoidance of doubt, it is hereby declared that sums deducted in accordance with this Part-

(a) are not income tax, but are on account of the liability to income tax, whether determined or yet to be determined, of the employee in respect of whom they are made; and

(b) may be applied at any time by the Commissioner in payment or reduction of that person's liability to tax in respect of the year of assessment in which the deduction was made or the immediately following year or any earlier year.

(2) Where an employee is liable to income tax for any year of assessment preceding the year in which the sum is deducted, and the amount of that liability has been determined, the Commissioner shall apply such sums so that any such liability in respect of an earlier year of assessment is wholly discharged before any such sums are applied in satisfaction (or partial satisfaction) of any such liability in respect of any later year of assessment.

90 Repayment of sums deducted

(1) If an individual who is resident or ordinarily resident in the Falkland Islands satisfies the Commissioner, by his return of income or otherwise, that the deductions made under this Part from his earned income for any year of assessment exceed the aggregate of-

(a) his liability to income tax in respect of that earned income; and

(b) any outstanding liability of his to tax in respect of any preceding year of assessment,

the Commissioner shall repay to him the excess without undue delay.

[S. 52(2)/Ord. 13/10/w.e.f. 1/1/11.]

(2) If the Commissioner believes that a person entitled to a repayment under subsection (1) is liable to pay an amount under the Medical Services Tax Ordinance (or subsidiary legislation made under it), the Commissioner may set off the repayment against that liability.

[S. 52(3)/Ord. 13/10/w.e.f. 1/1/11; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

91 The POAT regulations

(1) In this Part "the POAT regulations" means regulations under this section.

(2) The Governor may make regulations for determining the sums which an employer is, under this Part, required to deduct from payments to any employee of that employer in any year.

(3) Regulations under this section may require sums to be deducted in accordance with tables prepared, or directions given, by the Commissioner from time to time.

(4) Sums to be deducted under this Part from payments made by an employer to an employee in any year shall be related to the earned income of the employee under that employer, in such manner as is calculated so far as is possible to achieve the result that the total sum deducted in respect of any employee does not exceed the likely liability of that employee for income tax in respect of that income (but, nevertheless, the regulations, tables or directions, as the case may be, shall not be invalid merely because, for any reason, they fail to achieve that result).

(5) The amounts to be deducted in respect of any pay period in respect of any employee shall be calculated having regard either-

(a) to that employee's gross earnings from that employment during the calendar year to date; or

(b) to the amount of the cash or money earned from that employment during that pay period;

and for the purposes of this subsection "pay period" means the period in respect of which an employee is paid, but the regulations may make such provision as may be necessary to cater for pay periods of differing length and shall, in any case, make provision for monthly and weekly pay periods.

(6) Regulations under this section may prescribe the times at which employers shall submit information to the Commissioner as to deductions made, the information to be submitted and the time or times at which employers shall pay over to the Commissioner sums deducted under this Part.

(7) Regulations under this section-

(a) shall exempt from liability to suffer deduction the earnings of any employee of an employer (not being a pensioner or annuitant of that employer) who has not worked for that employer or, in the case of an employee with more than one employer, for all his employers-

(i) in the case of weekly-paid employees at least 15 hours during that pay period and who has not worked at least 60 hours in aggregate during that pay period and the three pay periods preceding that pay period;

[S. 15/Ord. 16/13/w.e.f. 1/1/14.]

(ii) in the case of monthly-paid employees, at least 60 hours during the month constituting the pay period; and

(b) may provide for exemptions from deductions under this Part; and

(c) may prescribe different rates of deductions in respect of employees who are resident in the Falkland Islands and those who are not.

(8) Regulations under this section shall not require deductions to be made from any payment which is not a payment of earned income.

(9) Regulations under this section may make provision requiring information to be provided to the Commissioner by any person employing or intending to employ any other person in the Falkland Islands or a designated area with respect to arrivals in and departures from the Falkland Islands or a designated area of such other persons.

(10) Regulations under this section may provide for any other matter necessary or convenient to be prescribed in the regulations, and in particular but without prejudice to the generality of the foregoing the regulations may-

(a) make provision with respect to the preservation and production to employees of records and other information relating to deductions;

(b) make provision with respect to the confidentiality of information;

(ba) impose civil or administrative penalties for failure to comply with the regulations; and

[S. 10/Ord. 23/03/w.e.f. 1/1/04.]

(c) prescribe acts or omissions which shall be offences punishable with imprisonment for a term not exceeding three months or a fine not exceeding the maximum of level 7 on the standard scale or both such imprisonment and fine.

92 Bankruptcy and liquidation

If an employer-

(a) being an individual, is adjudicated bankrupt; or

(b) being a company, has a winding-up order made in respect of it and is insolvent,

then, notwithstanding any other provision of law, sums deducted under this Part from the earned income of the employees of that employer and not paid to the Commissioner by that employer shall rank in priority to all debts which are not secured debts of the employer and shall be discharged in full before any other unsecured debts, preferred or unpreferred, of the individual or company may rank for dividend or otherwise be paid in whole or in part.

93 Non-resident employees

(1) In any case where, in accordance with this Part, an amount-

(a) has been deducted from the earned income for a year of assessment of an employee who is not, or not ordinarily, resident in the Falkland Islands for the whole of the year immediately preceding that year; and

(b) has been applied in payment or reduction of the liability to income tax of that employee for that year of assessment,

the amount deducted shall, subject to subsection (2), be deemed for all purposes to be the amount of income tax due in respect of that earned income and, accordingly, the employee may not

assert in any proceedings whatsoever that his liability to income tax in respect of that earned income was less than the amount deducted.

(2) Subsection (1) shall not prevent the Commissioner from repaying the whole or any part of an amount deducted in any year to the employee in accordance with section 90 if the employee submits a return of income for that year before the end of the year immediately following that year.

(3) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(4) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) Subsections (1) and (2) above shall not apply in any case where in the opinion of the Commissioner the amount deducted from any earned income for a year of assessment is less than the liability to income tax of the employee for that year.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

94 . . .

[S. 4(2)/Ord. 23/02/w.e.f. 1/1/03.]

95 Interpretation of Part IV

In this Part-

(a) "work", in relation to an employee, means the performance of any duties of the employment of the employee, and any reference to his working shall be construed accordingly;

(b) a payment is made by an intermediary of the employer if it is made-

(i) by a person acting on behalf of the employer and at the expense of the employer or a person connected with him; or

(ii) by trustees holding property for any persons who include, or class of persons which includes, the employee;

(c) any reference to assessable income is a reference to income which is assessable to income tax under this Ordinance as the emoluments of an employment;

(d) "employer" includes any employer whether or not resident or ordinarily resident in the Falkland Islands or carrying on a business through a branch or agency in the Falkland Islands.

96 Criminal penalties

(1) Any person who fails to comply with any requirement of the POAT regulations or of a direction under section 86 to pay any sum to the Commissioner commits an offence and shall be liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(2) Subsection (1) above does not apply in relation to any failure which is a criminal offence by virtue of any provision of the regulations.

(3) Any person who fails to comply with any requirement of the POAT regulations to pay any sum to the Commissioner shall be liable to a penalty equal in amount to that sum.

PART V
TAXATION OF BUSINESSES

CHAPTER I
GENERAL PROVISIONS

97 Allowable deductions: general principle

(1) Subsection (3) sets out the general principle according to which the income of a business is to be calculated for a relevant accounting period.

(2) The rest of this Chapter sets out rules that apply in specific situations.

(3) The general principle is that that outgoings and expenses may be deducted from the income of the business if (but only if)-

(a) they were incurred during the relevant accounting period;

(b) they were incurred wholly and exclusively for the purposes of the business; and

(c) they are not of a capital nature.

[S. 15/Ord. 2/11/w.e.f. 1/1/11.]

97A Allowable deductions: specific examples

(1) The following are specific examples of outgoings and expenses that may be deducted when calculating the income of a business for a relevant accounting period-

(a) interest paid on money borrowed for the purposes of the business, but only to the extent that the Commissioner is satisfied that the interest was payable on capital used to acquire the income of the business;

(b) the cost (written off over the period of the loan) of incidental expenses reasonably incurred in relation to loan finance wholly and exclusively used for the purposes of the business;

(c) rent paid for land or buildings occupied for the purposes of the business;

(d) expenditure on-

(i) repairing premises, plant and machinery used in the business; or

(ii) renewing, repairing or altering tools and equipment used in the business;

(e) expenditure reasonably incurred to advertise or promote the business (other than on gifts or entertainment);

(ea) expenditure incurred in providing entertainment to an individual employee subject to the maximum annual expenditure not exceeding £100 for each employee;

(eb) any capital expenditure to a value not exceeding £500 per individual capital asset that would have qualified for a depreciation allowance under Chapter II of Part V but for section 105(7);

(ec) contributions made to the Environmental Impact Offsetting Trust of a kind referred to in section 15(a) of the Offshore Petroleum (Environmental Impact Offsetting Trust) Ordinance 2026;

(f) bad and doubtful debts incurred in a business, but only if the conditions in section 97B are satisfied; and

(g) other deductions prescribed in rules made under section 97D.

[S. 16/Ord. 2/11/w.e.f. 1/1/11] [S. 16/Ord. 16/13/w.e.f. 1/1/14.] [S. 7/Ord. 10/20/effective for the period of account starting on or after 1/1/21.] [S. 69/Ord. 5/2026/w.e.f. 12/6/26]

(2) Subsection (1)(ec) does not prevent —

(a) other contributions to the Environmental Impact Offsetting Trust; or

(b) other outgoings and expenses incurred in connection with offsetting environmental impacts,

from being allowable deductions under section 97 if they meet the criteria in that section.

[S. 69/Ord. 5/2026/w.e.f. 12/6/26]

97B Bad and doubtful debts

(1) This section sets out the three conditions that must be satisfied for a bad or doubtful debt to be deducted under section 97A(1)(f).

(2) The first condition is that the debt must have been due and payable before the start of the relevant accounting period for which the deduction is made.

(3) The second condition is that either-

(a) the Commissioner must be satisfied that the debt became bad during the relevant accounting period; or

(b) in the case of doubtful debts, the Commissioner must be satisfied about the extent to which it is estimated that they became bad during that period.

(4) The third condition is that the Commissioner must be satisfied that all reasonable steps have been taken to recover the debt.

[S. 16/Ord. 2/11/w.e.f. 1/1/11.]

97C Recovery of bad or doubtful debts

(1) Subsection (2) applies to sums that are recovered on account of amounts previously written off or allowed in respect of bad or doubtful debts.

(2) Sums to which this subsection applies are to be treated for the purposes of this Ordinance as receipts of the business for the period in which they are recovered.

[S. 16/Ord. 2/11/w.e.f. 1/1/11.]

97D Power to make rules about allowable deductions

The Governor may make rules providing for either or both of the following matters-

(a) prescribing deductions that may be made under section 97A(1)(g); and

(b) the method of calculating or estimating deductions allowed under section 97A or 97B.

[S. 16/Ord. 2/11/w.e.f. 1/1/11.] [S. 17/Ord. 16/13/w.e.f. 1/1/14.] [S. 69/Ord. 5/2026/w.e.f. 12/6/26]

97E Renewable Energy Technology in Camp

(1) Where a business acquires or enhances renewable energy technology that is used in Camp for a cost of £50,000 or less, the Commissioner must, on approving a claim, in addition to the amount of that expenditure, allow a further sum equal to one-half of that amount of the expenditure, to be deducted from the profits of the business.

(2) Where the amount of the expenditure exceeds £50,000, the business will qualify for -

(a) the additional one-half deduction for the expenditure of £50,000 in accordance with subsection (1); and

(b) depreciation allowances under section 117 on the excess expenditure above £50,000.

(3) A claim under this section for the additional deduction must be submitted in a form prescribed by the Commissioner and must accompany the person's tax returns submitted in accordance with sections 12 or 30 for the year the expenditure was incurred.

[S. 8/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

98 Restriction on deduction of emoluments before payment

(1) Subsection (2) below applies where-

(a) a calculation is made of profits or gains which are within the charge to tax and are for a period of account beginning on or after 1st January 1996; and

(b) relevant emoluments would (apart from subsection (2)) be deducted in making the calculation; and

(c) the emoluments are not paid before the end of the period of nine months beginning with the end of that period of account; and in this section that period of nine months is referred to as the permitted payment period.

(2) The emoluments-

(a) shall not be deducted in making the calculation mentioned in subsection (1)(a) above; but

(b) shall be deducted in calculating profits or gains which are within the charge to tax and are for the period of account in which the emoluments are paid.

(3) Where-

(a) a calculation such as is mentioned in subsection (l)(a) above is made;

(b) the calculation is made before the end of the permitted payment period;

(c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation; and

(d) the emoluments have not been paid when the calculation is made,

it shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of the permitted payment period.

(4) A calculation made in accordance with subsection (3) shall be adjusted if-

(a) the emoluments are paid after the calculation is made but before the end of the permitted payment period;

(b) a claim to adjust the calculation is made to the Commissioner; and

(c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.

(5) For the purposes of this section "relevant emoluments" are emoluments for a period beginning on or after 1st January 1996 allocated either-

(a) in respect of particular offices or employments (or both); or

(b) generally in respect of offices or employments (or both).

(6) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose-

(a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;

(b) potential emoluments are paid when they become relevant emoluments which are paid.

(7) ...

[S. 18/Ord. 16/13/w.e.f. 1/1/14.]

99 Entertainment expenses

Any item of expenditure incurred in entertainment by a person carrying on a business shall be wholly disallowed in ascertaining the profits of the business unless the Commissioner is satisfied that it was reasonably incurred for the purpose of that business.

99A Wear and tear deduction for residential letting outside the Falkland Islands

(1) This section applies to a business if it consists of letting a building outside the Falkland Islands (or part of one) for residential use.

(2) A deduction of 10% of the gross income of the business may be claimed in respect of wear and tear to the building and its contents and furnishings.

(3) No other deduction may be claimed for repairs to the building or for the provision, renewal or replacement of its contents or furnishings.

[S. 17/Ord. 2/11/w.e.f. 1/1/11 (as corrected by S.R. & O. 6/11/w.e.f. 31/3/11)..]

100 Special provisions relating to insurance companies

(1) The following provisions of this section shall have effect notwithstanding any provision to the contrary in this Ordinance.

(2) In any case where the gains or profits of an insurance company (other than a life insurance company) accrue in part outside the Falkland Islands, the gains or profits on which tax is chargeable for a chargeable period shall be ascertained by-

(a) taking the gross premiums and interest and other income received or receivable in the Falkland Islands (less any premiums returned to the insured and premiums paid on reinsurances);

(b) deducting from the balance so arrived at, a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the relevant accounting period;

(c) adding thereto a reserve similarly calculated for unexpired risks outstanding at the beginning of the relevant accounting period; and

(d) from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

(3) Subject to subsection (4) below, the gains or profits of a life insurance company, whether mutual or proprietary, on which tax is payable shall be the investment income less the management expenses (including -commission).

(4) Where such a company received premiums outside the Falkland Islands, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the Falkland Islands bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the Falkland Islands and a fair proportion of the expenses of the head office of the company.

100A Taxation of proceeds of share dealing in certain fishing companies

(1) Where a person disposes of unquoted shares which derive their value in whole or in part from any individual transferable quota, then-

(a) if the consideration for the disposal of the shares exceeds the acquisition costs of the shares, an amount equal to that excess shall be deemed to be income accruing to that person at the time of the disposal; and

(b) where the acquisition costs of the shares exceed the consideration, an amount equal to that excess shall be allowable as a deduction in the computation of that person's chargeable income for the year in which the disposal takes place.

(2) For the purposes of subsection (1) "acquisition costs" in relation to the disposal of any shares by any person, means-

(a) expenditure (in money or money's worth) incurred by that person in the acquisition of the shares; and

(b) the incidental costs incurred by him in connection with the disposal.

For this purpose "incidental costs" has the meaning given by paragraph 1(3) of Schedule 2.

(3) The following provisions of this Ordinance shall apply for the purposes of this section as they apply for the purposes of Chapter II of Part VI of this Ordinance, that is to say, sections 142(1), 144, 146, 147(4) and (5) and 148.

[S. 4(1)/Ord. 6/08/w.e.f. 1/1/06 (as corrected by S.R. & O. 10/08/w.e.f. 1/1/06).]

(3A) For the purposes of the provisions of Chapter II of Part VI applied by subsection (3) any reference to a group is a reference to a 51 per cent. group, and two companies shall be taken to be members of the same group if one is a 51 per cent. subsidiary of the other or both are 51 per cent. subsidiaries of a third company.

Section 139(4) to (7) shall apply for the interpretation of this paragraph as those provisions apply for the interpretation of Chapter 4 of Part 5 of this Ordinance.

[S. 4(2)/Ord. 6/08/w.e.f. 1/1/06.]

(4) For the purposes of subsection (3), in Chapter II of part VI of the Taxes Ordinance-

(a) any reference to exploration or exploitation rights shall be read as a reference to individual transferable quota; and

(b) any reference to a chargeable gain shall be omitted.

[S. 5/Ord. 6/06/w.e.f. 1/3/06.]

(5) Schedule 1A which provides for exemption and relief in certain cases from the provisions of this section shall have effect.

[S. 5(1)/Ord. 6/08/effective in relation to any disposal or acquisition of shares on or after 1/6/08.]

100B Notification to Commissioner where fishing rights transferred etc

(1) Any person who acquires or disposes of the whole or any part of any individual transferable quota shall give notice in the prescribed form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(2) Any person who acquires or disposes of any interest in unquoted shares which derive their value in whole or in part from individual transferable quota shall give notice in the prescribed

form to the Commissioner of the acquisition or disposal not later than 28 days after the date of the acquisition or disposal.

(3) Any person who fails to give notice in accordance with subsection (1) or (2) shall be liable to a penalty of £100 and to a further penalty of £50 for every month or part of a month during which the default continues.

[S. 5/Ord. 6/06/w.e.f. 1/3/06.]

101 Excess benefits in kind, and remuneration of non-resident directors

(1) . . .

[S. 3(4)/Ord. 23/03/w.e.f. 1/1/04.]

(2) . . .

[S. 3(4)/Ord. 23/03/w.e.f. 1/1/04.]

(3) . . .

[S. 3(4)/Ord. 23/03/w.e.f. 1/1/04.]

(4) Where during the whole or any part of an accounting period of a company ("the relevant period")-

(a) any of its directors are non-resident; and

(b) more than 50 per cent of the ordinary share capital is held by its directors,

the deduction permitted to be made from the company's profits and gains for the relevant period or any other accounting period in respect of any remuneration of a director attributable to any time during the relevant period when he is non-resident shall not exceed-

(i) 15 per cent of the company's chargeable income for that accounting period (computed before making any deduction in respect of the remuneration of the directors); or

(ii) £7,500,

whichever is the greater, so however that the deduction shall in no case exceed £15,000

(5) For the purposes of subsection (4)-

(a) shares are held by a director if they are held by the director himself or by any person connected with him; and

(b) "non-resident" means not resident in the Falkland Islands.

(6) Subsection (4) does not apply in relation to the remuneration of any director if that remuneration (after making any deduction permitted by any provision of this Ordinance apart from this section) is chargeable income in the hands of the director.

102 Augmented deduction of training expenses

(1) Where the Commissioner is satisfied-

(a) that any expenditure has reasonably been incurred by a person -carrying on a business on the training or education of a person employed or intended to be employed in that business; and

(b) that the training or education was incurred for the purpose of improving the value of that person as an employee in that business or of fitting him (if not already employed) for employment in the business,

the Commissioner shall, in addition to the actual amount of that expenditure, allow a further sum equal to one-half of that amount to be deducted from the profits of the business.

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

(a) a sole owner of and any partner in any business shall be taken to be employed, as an employee, in that business; and

(b) "training or education" does not include education at any school, college, institution or establishment however described which a person attends for the purpose of non-vocational education below the tertiary education level.

103 Relief for pre-trading expenditure

(1) Where a person incurs expenditure, not being expenditure to which any provision of Chapter II of this Part applies, for the purposes of a business before he commences to carry on that business, then subject to subsection (2) he shall be deemed for all the purposes of income tax and corporation tax to have incurred that expenditure on the first day on which he commences to carry on that business.

(2) Relief under subsection (1) shall be given on a claim but the Commissioner may disallow any claim for the relief in any case where he is satisfied that the expenditure was not incurred in good faith for the purposes of the business.

104 Certain payments of interest not deductible

(1) Any payment of interest by a company in respect of securities issued by the company-

(a) where the securities are held by a non-resident company and either-

(i) that company owns (directly or indirectly) not less than 75 per cent of the ordinary share capital of the issuing company; or

(ii) another non-resident company owns (directly or indirectly) not less than 75 per cent of the ordinary share capital of both companies; or

(b) where-

(i) the securities are held by a non-resident company; and

(ii) a resident company directly owns less than 90 per cent of the share capital of the issuing company and another resident company owns (directly or indirectly) not less than 75 per cent of the ordinary share capital of both the issuing company and the company holding the securities, shall not be deductible in ascertaining the chargeable income of the company unless and to the extent that the Commissioner directs the company that the payment may be deducted.

(2) In this section-

"non-resident company" means a company which is not resident in the Falkland Islands;

"resident company" means a company which is resident in the Falkland Islands, and

"securities" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company.

104A Bunkering activities in Falkland Islands waters

(1) Any person who provides bunkering services in the internal waters or territorial sea of the Falkland Islands shall be deemed to be carrying on a business in the Falkland Islands, and any profits and losses which arise therefrom shall be deemed to arise from a source in the Falkland Islands.

This subsection shall not apply in relation to the provision of bunkering services before 1st January 2001 but shall apply in relation to the provision of bunkering services on or after that date.

(2) In this section -

"**bunkering services**" means the supply to boats or oil platforms of any petroleum product within the meaning of the Petroleum Products Ordinance under the authority of a licence granted under the Ordinance;

[S. 19/Ord. 16/13/w.e.f. 1/1/14.]

"**exemption certificate**" means a certificate granted under subsection (9) below;

"**licensee**" means the person to whom a licence under the Petroleum Products Ordinance has been granted;

"**oil platform**" means a structure whether intended to be fixed to the seabed or not and designed to support the equipment and stores required for drilling or for exploiting oil or gas by means of wells already drilled and connected or to be connected to the platform; and

"**supplier**" means any person providing bunkering services, other than the licensee.

(3) Subject to the following provisions of this section, the Commissioner may by notice require the licensee to pay an amount of tax which has been assessed on any supplier in respect of profits or gains of any business providing bunkering services, if the tax remains unpaid later than thirty days after it has become due and payable.

(4) An amount of unpaid tax may not be included in a notice under this section if the tax-

(a) was assessed in respect of profits or gains arising or accruing to a person as respects whom an exemption certificate has been issued ("an exempt person") at a time when such a certificate is in force as respects that person; or

(b) is payable by an exempt person and became due at a time when an exemption certificate is in force as respects that person; or

(c) was assessed in respect of the emoluments of any employment; or

(d) was assessed in respect of the profits or gains of an accounting period beginning before 1st January 2001,

and such fair and reasonable apportionments of unpaid tax shall be made as may be necessary to give effect to this subsection.

(5) The licensee shall pay the amount of unpaid tax stated in the notice, together with any interest due thereon under this Ordinance, within thirty days of the service of the notice.

(6) A notice under this section shall state particulars of the assessment, the amount remaining unpaid, the date when it became payable and the amount of interest due, and where it is based on an apportionment under subsection (4) above, the notice shall include particulars of the manner in which the amount required to be paid was determined.

(7) Any amount which a licensee is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded from him; and he may recover any such amount paid by him from the person on whom the assessment was made.

(8) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(9) Where, on an application made by a supplier, the Commissioner is -satisfied that the applicant will comply with any obligations imposed on him by this Ordinance, he may issue a certificate to the licensee exempting him from the provisions of this section with respect to any tax payable by the applicant.

(10) The Commissioner may, by notice in writing to the holder of a -certificate issued under this section, cancel the certificate from such date, not earlier than thirty days after the service of the notice, as may be -specified in the notice.

[S. 3(4)/Ord. 14/00/w.e.f. 1/1/01.]

CHAPTER II
DEPRECIATION ALLOWANCES

General

105 Initial and writing down allowances: general provisions

(1) In ascertaining the chargeable income of any person carrying on a business, there shall, subject to the provisions of this Ordinance, be made allowances and charges in accordance with this Chapter.

(2) Subject to section 111(4) to (6), allowances and charges shall not be made under any provision of this Chapter in relation to a petroleum licence.

(3) Effect shall be given-

(a) to any allowance and deduction authorized by this Chapter on a claim being made in that behalf by the person entitled to the allowance or deduction;

(b) to an allowance claimed for any chargeable period in respect of expenditure incurred on or after 1st January 2003 by a person carrying on a business, as an expense of that business arising in that basis period for that chargeable period;

(c) to any balancing charge under this Chapter, by treating the amount of the charge as a trading receipt of the business concerned.

[S. 16/Ord. 23/02/w.e.f. 1/1/03.]

(4) Where —

(a) a person has no (or insufficient) chargeable income for any chargeable period and the whole or part of an allowance cannot be made for that period, the allowance, or that part of the allowance to which effect has not been given, shall be relieved in accordance with sections 126 and 128; and

(b) paragraph (a) applies in respect of allowances claimed in respect of expenditure incurred in more than one basis period, effect shall be given to the allowances in the order in which the expenditure was incurred, taking the most recently incurred expenditure first.

[S. 9(a)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(5) Where-

(a) expenditure is incurred otherwise than in the open market; and

(b) apart from this subsection, an allowance could be claimed under this Chapter in relation to the expenditure; and

(c) the amount of the expenditure exceeds what it would have been if it had been incurred in the open market,

then, for the purposes of this Chapter, the amount of that expenditure shall be taken to be the amount of the expenditure less the amount of that excess.

(6) A person may elect not to take the benefit of the whole or part of any allowance or deduction to which he is entitled under this Chapter.

(7) No allowance shall be made under this Chapter in respect of a deduction which has been given under section 97A(1)(eb).

[S. 9(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.] [S. 69/Ord. 5/2026/w.e.f. 12/6/26]

106 Interpretation for purposes of Chapter II

(1) Any reference in this Chapter to assets representing any expenditure includes any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

(2) Any reference in this Chapter to an asset includes a reference to a part of an asset or a share in an asset and-

(a) subject to section 123, where an apportionment of any expenditure is required for the purposes of any provision of this Chapter, whether the requirement is express or implied, the apportionment shall be made on a just and reasonable basis; and

(b) for the purposes of this Chapter, a share in an asset of any description shall be deemed to be used for the purposes of a business so long as, and only so long as, the asset is used for those purposes.

(3) Where a person has claimed or may claim an allowance under this Chapter in respect of expenditure incurred on the provision of an asset or represented by an asset, then for the purposes of this Chapter (but subject to section 114) "**relevant event**", in relation to that person and that asset, means any one of the following events, namely-

(a) it ceases to belong to him; or

(b) he loses possession of it in circumstances where it is reasonable to assume that the loss is permanent; or

(c) it ceases to exist as such (as a result of destruction, decommissioning or otherwise); or

(d) it begins to be used wholly or mainly otherwise than for the purposes of the business; or

(e) the business is permanently discontinued (or is treated by virtue of any provision of this Ordinance as permanently discontinued); or

(f) that person ceases to be within the charge to tax in the Falkland Islands in respect of the business for the purposes of which the asset is used; or

(g) the asset ceases to be situated in the Falkland Islands or any designated area, unless its absence is only temporary and not for the purposes of any business carried on (wholly or partly) outside the Falkland Islands and the designated areas; or

(h) in the case of computer software or the right to use or otherwise deal with computer software, he grants to another person a right to use or otherwise deal with the whole or part of the computer software concerned in circumstances where the consideration in money for the grant constitutes (or if there were consideration in money for the grant would constitute) a capital sum,

but the disposal of a petroleum licence or its surrender or determination in accordance with the terms of the licence or the disposal of any intellectual property shall not be a relevant event for the purposes of this Chapter.

[S. 4(1)/Ord. 12/19/w.e.f. 1/1/19.] [Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(3A) In this Chapter —

(a) a reference to expenditure for acquiring, constructing or enhancing machinery, plant or other asset to which section 112, 116 or 117 applies is a reference to the amount of capital expenditure which the person, who (subject to sections 121 and 122) claims the depreciation allowance, spends on the acquisition, construction or enhancement of the machinery, plant or other asset; and

(b) if the reference is a reference to an amount of capital expenditure spent on the acquisition, construction or enhancement of a building, car park, hard standing, consolidated laydown, jetty or renewable energy technology, it does not include a reference to the cost or value of the land on which the building, car park, hard standing, consolidated laydown, jetty or renewable energy technology is built.

[S. 4(2)/Ord. 12/19/w.e.f. 1/1/19; and S. 10(a)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(4) In this Chapter-

"basis period" in relation to a chargeable period, means the period on the income of which income tax or corporation tax for that chargeable period falls to be computed;

“building” means —

(a) any permanent or temporary structure with a roof, floor and walls; and

(b) includes any ground works in connection with the construction, enhancement or re-erection of a building;

[S. 40(a)(i)/Ord. 5/15/w.e.f. 1/7/15; S. 7(a)/Ord. 6/16/w.e.f. 1/1/16; and S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

"car park" means an area without a roof or other covering, in which motor vehicles are parked;

[S. 40(a)(ii/Ord. 5/15/w.e.f. 1/7/15.]

“consolidated laydown” has the same meaning as “hard standing”;

[S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

[S4(3)/Ord. 12/19/w.e.f. 1/1/19]

“**decommissioning**” includes demolition and abandonment;

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

"farmhouse" means the principal residence of the farm owner, manager or any person in control of the operation of the farm (that is used for residential purposes);

[S. 7(c)/Ord. 6/16/w.e.f. 1/1/16.]

“jetty” means a permanent structure that extends along or out from the shore into a body of water, which allows for the mooring, loading or unloading of vessels;

[S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

“ground works” means works involved in preparing, cultivating, tunnelling or levelling land prior to, and in connection with, the construction, enhancement or re-erection of a building;

[S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

"hard standing" means an area of ground surfaced with a hard material that has been sealed to the ground in a manner which prevents it from being extracted without the surfacing being destroyed;

[S. 40(a)(iii)/Ord. 5/15/w.e.f. 1/7/15.]

“major shareholder” in relation to any company, means a person who is, or who together with any person connected to them is, the beneficial owner of 25 per cent or more of the issued share capital of the company carrying voting rights at general meetings of the company;

[S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

"market value", in relation to any asset at any time, means the price which the asset would have fetched if sold in the open market at that time and for the purposes of this Chapter any reference to expenditure incurred in the open market is a reference to expenditure which would have been incurred if the transaction in question had taken place between willing parties acting at arms' length, in particular disregarding any limitation on the market, or any relationship between the parties, which may actually exist; and

[S. 17/Ord. 23/02/w.e.f. 1/1/03.]

“renewable energy technology” means any technology and its system components which is leveraged to generate electricity or heat from renewable non-fossil sources, namely wind, solar (thermal or photovoltaic) and geothermal energy, ambient energy, tide, wave, and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogas;

[S. 7(c)/Ord. 6/16/w.e.f. 1/1/16; and S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

"road" means a path built for traffic by motor vehicles with a durable surface material that has been sealed to the ground in a manner which prevents it from being extracted without the surfacing being destroyed;

[S. 3/Ord. 10/15/w.e.f. 1/1/16 (as corrected by S.R. & O. 31/15/w.e.f. 24/12/15 and by S.R. & O. 3/16/w.e.f. 1/1/16.]

“**written-down value**”, in relation to a capital asset, means the amount of the expenditure incurred in acquisition, construction or enhancement of the asset less the sum of any initial and writing-down allowances made in respect of the asset for all earlier chargeable periods;

[S. 10(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(5) In any case where-

(a) a person claims an allowance under this Chapter as respects an asset the expenditure on the acquisition, enhancing or constructing of which was incurred in a chargeable period earlier than the period in which the asset is first used for the purposes of a business; and

(b) the asset was used for other purposes before first being using for the purposes of the business; and

(c) the market value of the asset at the time it is first so used is less than the expenditure on its acquisition, enhancing or constructing actually incurred by that person,

then, for the purposes of this Chapter, subject to any provision to the contrary, the expenditure on the acquisition, enhancing or constructing of the asset shall be taken to be equal to the market value of that asset at the time it is first so used.

[S. 10(c)/Ord. 10/20/effective for the period of account starting on or after 1/1/21]

106A Time when capital expenditure is deemed to be incurred

(1) For the purposes of this Chapter, the general rule is that an amount of capital expenditure is to be treated as incurred as soon as there is an unconditional obligation to pay it.

(2) The general rule applies even if the whole or a part of the expenditure is not required to be paid until a later date, but this is subject to subsection (3).

(3) If under an agreement-

(a) an amount of capital expenditure is not required to be paid until a date more than six months after the unconditional obligation to pay has come into being; and

(b) the unconditional obligation to pay relates to expenditure which in total is not less than £30,000,

then the amount mentioned in paragraph (a) is to be treated as incurred on the date mentioned in that paragraph.

[S. 11/Ord. 23/03/w.e.f. 1/1/04.]

106B. Machinery and plant on hire purchase

(1) In this section —

"**contract**"—

(a) includes one or more contracts between the same persons which together constitute a single arrangement or part of a single arrangement between those same persons; and

(b) does not include a contract between connected persons;

"**machinery or plant**" includes a vehicle and a ship;

"**person**" means a person carrying on a business who incurs capital expenditure on the provision of machinery or plant for the purposes of the business.

(2) This section applies if a person incurs capital expenditure on the provision of machinery or plant under a contract that —

(a) transfers substantially all the risks and rewards incidental to ownership of the machinery or plant to the person; and

(b) provides that the person will or may become the owner of the machinery or plant on the performance of the contract.

(3) The machinery or plant is to be treated as if it were owned by the person (and not by any other person) while the person is entitled to the benefit of the contract to the extent that the benefit of the contract relates to the machinery or plant.

(4) All capital expenditure to be incurred under the contract in respect of the machinery or plant after the machinery or plant is brought into use for the purposes of the person's business is to be treated as if it were expenditure the person incurs at the time the machinery or plant is brought into use.

(5) If the person ceases to be entitled to the benefit of the contract to the extent that the benefit of the contract relates to the machinery or plant without in fact becoming the owner of the machinery or plant, the machinery or plant is to be treated as ceasing to belong to the person at the time the person ceases to be entitled to the benefit of the contract.

(6) Subject to subsection (8), if the person ceases to be entitled to the benefit of the contract after the machinery or plant was brought into use for the purposes of the person's business, the disposal value of the machinery or plant is taken to be an amount equal to the sum of —

(a) the capital sums or other money's worth that the person receives or is entitled to receive by way of consideration, compensation, damages or insurance money in respect of his rights under the contract, or in respect of the machinery or plant; and

(b) so much of the capital expenditure that the person did not in fact incur.

(7) Subject to subsection (8), if the person ceases to be entitled to the benefit of the contract before the machinery or plant was brought into use for the purposes of the person's business, the disposal value of the machinery or plant is taken to be an amount equal to the capital sums or other money's worth that the person receives or is entitled to receive by way of consideration, compensation, damages or insurance money in respect of the person's rights under the contract, or in respect of the machinery or plant.

(8) If the disposal value of the machinery or plant referred to in subsection (6) or (7) is less than the total amount that would be received by the person for the machinery or plant if the person were owner of the machinery or plant and had sold the machinery or plant in the open market or otherwise at arm's length, the disposal value is to be taken to be the total amount that would have been received if the machinery or plant were sold by the person as the owner in the open market.

[S. 5/Ord. 12/19/w.e.f. 1/1/19.]

Scientific research allowances

107 Deductions in respect of expenditure on scientific research

(1) The provisions of this section shall have effect subject to section 110(3) but, subject to that, shall have effect notwithstanding any other provision of this Ordinance.

(2) There shall be allowable as a deduction in ascertaining a person's chargeable income for a chargeable period an amount equal to the amount of-

(a) expenditure (whether of a capital nature or not) on scientific research related to any business carried on by that person and directly undertaken by him or on his behalf; or

(b) any sums paid to any scientific research association approved for the purposes of this section by the Governor being an association which has as its object the undertaking of scientific research related to the class of business to which the business he is carrying on belongs; or

(c) any sums paid to any university, institute, association or other body approved for the purposes of this section by the Governor to be used to fund any such research,

if the expenditure was incurred or the sums paid by that person in the basis period for that chargeable period.

(3) For the purposes of this section expenditure on the provision of a dwelling is not scientific research expenditure; but where-

(a) part of a building is used for scientific research and part consists of a dwelling; and

(b) the capital expenditure which it is just to apportion to the construction, enhancement or acquisition of the dwelling is not more than one-quarter of the capital expenditure which is referable to the construction, enhancement or acquisition of the whole building,

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

the whole building shall be treated for the purposes of this Chapter as used for scientific research.

(4) Where a person incurs capital expenditure which is partly within subsection (2) above and partly not, such apportionment of the expenditure shall be made for the purposes of this section as may be just and reasonable.

(5) Where a person who carries on any business has, before commencing to carry on that business, incurred expenditure on scientific research related to that business and directly undertaken by him or on his behalf, the expenditure incurred shall be deemed (for all purposes of the charge to tax) to have been incurred on the first day on which he does carry on that business.

(6) Subsection (5) above does not apply where the business is commenced before 1st January 1996 but, subject to that, applies to expenditure whenever incurred.

108 Assets ceasing to belong to businesses etc.

(1) Subsections (2) and (3) below shall have effect where a relevant event occurs with respect to an asset of a capital nature which represents allowable scientific research expenditure incurred by the person carrying on a business.

(2) If the relevant event occurs in or after the chargeable period for which an allowance in respect of the expenditure is made under section 107, then, subject to subsection (8) below-

(a) the sum by which the aggregate of the disposal value of the asset and the amount of the allowance exceeds the amount of the expenditure; or

(b) the amount of the allowance if it is less than that sum,

shall be treated as a trading receipt of the business accruing at the time of the relevant event or, if the relevant event occurs on or after the date on which the business is permanently discontinued, accruing immediately before the discontinuance.

(3) If the relevant event occurs before the chargeable period for which an allowance in respect of the expenditure would fall to be made under section 107-

(a) that allowance shall not be made; but

(b) subject to subsection (8) below, if the disposal value of the asset is less than the expenditure, an amount equal to the difference shall be treated as a trading expense of the business for the chargeable period in which the relevant event occurs.

(4) For the purposes of this section the disposal value of an asset depends upon the nature of the relevant event, and-

(a) if that event is the actual sale of the asset at a price not lower than that which it would have fetched in the open market, equals the proceeds of that sale;

(b) if that event is the deemed sale of the asset under subsection (5) below, equals the deemed proceeds of sale under that subsection; and

(c) in any other event, equals the price which the asset would have fetched if sold in the open market.

(5) Where an asset is destroyed, it shall for the purposes of this section be treated as if it had been sold immediately before its destruction, and any insurance moneys or other compensation of any description received by the person carrying on the business in respect of the destruction, and any moneys received by him for the remains of the asset, shall be treated as if they were proceeds of that sale.

(6) Where subsection (5) above has effect on the demolition of an asset, the cost of demolition to the person carrying on the business shall, for the purposes of subsections (2) and (3) above, be added to the expenditure represented by the asset.

(7) Where-

(a) subsection (6) applies in a case falling within subsection (2); and

(b) by reason of the addition made under subsection (6), the aggregate there referred to is more than the amount of the expenditure represented by the asset; and

(c) the asset had not prior to its demolition begun to be used for purposes other than scientific research related to the business,

then, subject to subsection (8) below, a deduction equal to the difference shall be allowed in computing the chargeable income of the person carrying on the business for the chargeable period in which the asset is treated as having been sold or, if it is treated as having been sold on or after the date on which the business is permanently discontinued, for the last chargeable period in which the business was carried on before the discontinuance.

(8) No amount shall be allowed or charged by virtue of this section in respect of any relevant event if that event gives rise to a balancing allowance or balancing charge under any other provision of this Chapter.

109 Interpretation of sections 107 and 108

(1) In this Chapter-

(a) **"scientific research"** means any activities in the fields of natural or applied science for the extension of knowledge;

(b) **"scientific research expenditure"** means expenditure incurred on scientific research;

(c) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, subject to that and to section 110(3), include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;

(d) references to scientific research related to a business or a class of businesses include-

(i) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, of businesses of that class;

(ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, of businesses of that class.

(2) The same expenditure shall not be taken into account for any of the purposes of sections 107 or 108 in relation to more than one business.

(3) Any reference in sections 107 and 108 to a business is, except in relation to a class of business, a reference to a business as respects which the person carrying on the business is within the charge to tax in the Falkland Islands.

(4) If any question arises under this Chapter as to whether, and if so to what extent, any activities constitute or constituted, or any asset is or was being used for, scientific research, the Commissioner shall refer the question for decision to the Governor and his decision shall be final.

(5) Any reference in this section or section 107 or 108 to the time when an asset ceases to belong to a person shall, in the case of a sale, be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

(6) The cost to a person of the demolition of any property to which section 108(6) applies shall not be treated for the purposes of this Chapter as expenditure incurred in respect of any other property by which that property is replaced.

Petroleum extraction activities

110 Petroleum extraction activities: general provisions

(1) In this Part-

"intangible drilling costs" means capital costs directly attributable to the drilling of development or production wells, other than costs which are directly attributable to the creation or acquisition of plant or machinery with a salvage value;

[S. 6/Ord. 6/15/w.e.f. 1/10/15.]

"petroleum" has the same meaning as in section 140(1); and

"petroleum exploration and appraisal" means searching for petroleum, ascertaining the characteristics of any petroleum-bearing area beneath controlled waters or ascertaining what are the petroleum reserves of any such area.

(2) For the purposes of this Chapter, expenditure on petroleum exploration and appraisal incurred by a person carrying on a ring-fence trade in connection with that trade (whether before or after that trade begins to be carried on) shall be deemed to have been incurred for the purposes of that trade.

(3) Expenditure within section 111(1)(a), (b) or (c), whether incurred by a person carrying on a ring-fence trade or not, shall not be eligible for an allowance or deduction under section 107 and accordingly is not expenditure within subsection (2) or (5) of that section.

(4) The following is not expenditure within section 111(1)-

(a) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;

(b) any expenditure on a building where the whole of the building was constructed for use as an office; and

(c) any expenditure on so much of a building or structure as was constructed for use as an office, if the capital expenditure on the construction of the part of the building or structure constructed for use as an office exceeded one-tenth of the capital expenditure incurred on the construction of the whole building or structure.

111 Expenditure eligible for allowances

(1) Subject to section 110(4), in ascertaining the ring-fence income of a person carrying on a ring-fence trade for a chargeable period, allowances and charges shall be made, in accordance with this section and sections 112 to 115, in respect of-

(a) expenditure incurred by him on petroleum exploration and appraisal;

(b) expenditure incurred by him on intangible drilling costs;

(c) expenditure incurred by him on the provision of machinery or plant for the purposes of the trade other than any expenditure falling within paragraph (a) above.

(2) In any case where-

(a) expenditure not falling within subsection (1)(a) or (c) above is incurred at any time by any person on the provision of an asset; and

(b) at any later time that asset begins to be used by that person for the purposes of petroleum exploration and appraisal or for the purposes of a ring-fence trade, without any relevant event having occurred in relation to that asset,

then, for the purposes of this Chapter, that person shall be treated as if at that later time he had acquired the asset for the purposes for which it is then used and had incurred expenditure on its acquisition or enhancement equal to the market value of that asset at that time or equal to his original expenditure on that asset if less (and accordingly such expenditure shall be treated for the purposes of this Chapter as falling within subsection (1)(a) or (c) above, as the case may be).

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(3) Subject to subsection (4) below, where expenditure falling within subsection (1)(a) or (b) above is incurred by any person before he begins to carry on a ring fence trade, then that person shall be treated for the purposes of this section as incurring, on the first day on which he begins to carry on that trade, an amount of expenditure on petroleum exploration and appraisal or on intangible drilling costs (as the case may be) equal to the amount of that expenditure, less any amount of such expenditure which is attributable to the provision of an asset which that person has disposed of before he begins to carry on that trade.

(4) Where-

(a) a person who holds a petroleum licence or any interest or share in such a licence ("the seller") has incurred expenditure within subsection (1)(a) or (b) above in relation to the licensed area; and

(b) the seller has not claimed any allowances under this Chapter in relation to that expenditure; and

(c) before he begins to carry on a ring fence trade, the seller disposes of all or part of his interest or share in the licence to another person ("the buyer"), whether before or after the buyer begins to carry on a business,

then, subject to subsections (5) and (6) below, an amount equal to the amount of that expenditure shall, for all purposes of the charge to tax (including further applications of this subsection where the licence is subsequently disposed of by the buyer before claiming an allowance), be deemed not to have been incurred by the seller but to have been incurred by the buyer on petroleum exploration and appraisal or on intangible drilling costs on the day on which the buyer acquired the licence.

(5) The amount of expenditure incurred by the seller which under subsection (4) above is to be deemed to be incurred by the buyer shall not include any expenditure attributable to any assets-

(a) expenditure on the provision of which by the seller does not fall within subsection (1)(a) or (b) above; or

(b) which either-

(i) belong to the seller immediately before the disposal, whether or not they are transferred to the buyer together with the licence or by a related transaction; or

(ii) have been disposed of before the disposal of the licence takes place; or

(c) where the seller retains an interest or share in the licence, any amount of expenditure which on a just and reasonable apportionment may be attributed to the interest or share retained.

(6) The amount of expenditure incurred by the seller which under subsection (4) above is to be deemed to be incurred by the buyer shall not exceed the lower of the following amounts-

(a) the amount of expenditure actually incurred by the seller as mentioned in subsection (4)(a) above, less any amount attributable to any asset within subsection (5) above;

(b) the amount or value of the consideration given by the buyer for the licence and any other asset disposed of by the same transaction, less any amounts excepted by subsection (5) above;

(c) the market value of the licence apart from any asset within subsection (5) above.

(7) In any case where-

(a) expenditure falling within subsection (1)(c) above is incurred by any person on the provision of any machinery or plant before he begins to carry on a ring-fence trade, and

(b) when he does begin to carry on that trade the asset belongs to him,

then that person shall be treated for the purposes of this section as if he had incurred the expenditure on the first day on which he begins to carry on that trade.

Where an asset has been used otherwise than for the purposes of a ring- fence trade, and the market value of the asset on the day he begins to carry on the ring-fence trade is less than the amount of expenditure which he is deemed to have incurred, then he shall be deemed to have incurred expenditure equal to that market value on the provision of that asset.

(8) Where expenditure falling within subsection (1)(c) above is incurred by any person on the provision of any machinery or plant before he begins to carry on a ring-fence trade, then if-

(a) that machinery or plant is sold or decommissioned before the ring fence trade is commenced; and

(b) the amount of that expenditure exceeds the amount of any sale, insurance, salvage or compensation moneys resulting from the sale or decommissioning of that machinery or plant,

that person shall be treated for the purposes of this section as incurring, on the first day on which he begins to carry on that trade, an amount of expenditure on the provision of plant and machinery equal to the amount of that excess.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(9) The provisions of subsections (4) to (6) above are without prejudice to the application of subsection (3) above in relation to any asset other than a petroleum licence.

112 Allowances and charges

(1) There shall be allowable as a deduction in ascertaining the ring-fence income of a person carrying on a ring-fence trade for a chargeable period an amount equal to the amount of expenditure incurred by that person-

(a) on petroleum exploration and appraisal in the basis period for that chargeable period;

(b) on intangible drilling costs in the basis period for that chargeable period.

(2) Where-

(a) an allowance under this section has been made to a person in taxing his ring-fence trade as respects expenditure within section 111(1)(a) or (b); and

(b) a relevant event occurs in relation to an asset representing that expenditure (and a relevant event has not occurred earlier in relation to the asset),

there shall be made on that person a balancing charge on an amount equal to the amount of that expenditure or, if less, the amount of the disposal value of the asset on that relevant event.

(3) Where-

(a) by virtue of section 111(4) an allowance has been made to a person with an interest or share in an oil licence in respect of expenditure falling within section 111(1)(a) or (b); and

(b) that person disposes of his interest or share in the licence concerned,

then, unless the Commissioner is satisfied that that person did not acquire his interest or share in the licence wholly or mainly for the purpose of obtaining that allowance, there shall be made on that person a balancing charge on an amount equal to the amount of that expenditure or such lesser amount as the Commissioner may direct.

For the purposes of this subsection, the reference to a person disposing of his interest or share in a licence includes a reference to his surrendering that interest or share and to its termination in accordance with the terms of the licence.

(4) A writing-down allowance shall be made for a chargeable period, in accordance with subsection (5) below, to a person carrying on a ring-fence trade in relation to expenditure incurred by him on the acquisition or enhancement of any machinery or plant (not falling within section 111(1)(a)) for the purposes of the trade by reference to the amount (if any) by which A exceeds (B + C) where as respects that chargeable period-

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

A is the amount of his expenditure on the acquisition or enhancement of such machinery or plant in the basis period for that period or any earlier period;

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

B is the amount of any writing-down allowances previously made in respect of that expenditure; and

C is the disposal value of any asset-

(a) expenditure on the acquisition or enhancement of which is qualifying expenditure taken into account under A above; and

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(b) in respect of which, in the basis period for the chargeable period, any one of the relevant events first occurs,

and the amount of that excess is referred to in subsection (5) below as "the relevant amount".

(5) The writing-down allowance to be made under subsection (4) above shall-

(a) where paragraph (b) does not apply, be equal to 25 per cent of the relevant amount found under that subsection (proportionately reduced or increased if the period is a period of less or more than a year, or the trade has been carried on for part only of the period);

(b) where during the basis period for the chargeable period in question the trade is permanently discontinued, be equal to the whole of the relevant amount so found.

(6) In any case where-

(a) an allowance is made or to be made, by virtue of subsection (5)(b) above, for the chargeable period in which the person claiming the allowance ceases to carry on his ring-fence trade; but

(b) the whole or part of the allowance cannot be made because of an insufficiency of ring-fence income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the three immediately preceding periods (but the allowance may only be made against ring-fence income of an earlier period in so far as there is an insufficiency of ring-fence income for later periods).

(7) For any chargeable period for which C exceeds (A - B), where C, A and B have the same meanings as in subsection (4), there shall be made on the person concerned a balancing charge on an amount equal to that excess.

113 The disposal value

(1) Subject to subsection (1A) and (2) below, for the purposes of section 112 the disposal value of any asset depends upon the relevant event by reason of which it falls to be taken into account and shall be found in accordance with section 106B or this section.

[S. 6(1)/Ord. 12/19/w.e.f. 1/1/19.]

(1A) If, in the application of a provision of this section in relation to the relevant event, an inconsistency arises between the provision and section 106B, section 106B prevails.

[S. 6(2)/Ord. 12/19/w.e.f. 1/1/19.]

(2) The disposal value of any asset shall in no case exceed the capital expenditure incurred or treated under this Chapter as incurred by the person in question on the provision of the asset for the purposes of the trade.

[S. 6(3)/Ord. 12/19/w.e.f. 1/1/19.]

(3) Where the relevant event is the sale of the asset, then if-

(a) the price is lower than that which it would have fetched if sold in the open market; and

(b) the buyer's expenditure on the acquisition or enhancement of the asset cannot be taken into account in making allowances to him under section 112,

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

the disposal value equals the price which the asset would have fetched if sold in the open market.

(4) If the relevant event is the sale of the asset and subsection (3) above does not apply, the disposal value equals the net proceeds to the person in question of the sale, together with any insurance moneys received by him in respect of the asset by reason of any event affecting the price obtainable on the sale, and, so far as it consists of capital sums, any other compensation of any description so received.

(5) If the relevant event is the destruction of the asset (otherwise than by decommissioning), the disposal value equals the net amount received by the person in question for the remains of the asset, together with any insurance moneys received by him in respect of the destruction and, so far as it consists of capital sums, any other compensation of any description so received.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(6) If the relevant event is the permanent loss of the asset otherwise than in consequence of its decommissioning or destruction, the disposal value equals any insurance moneys received by him in respect of the loss, and, so far as it consists of capital sums, any other compensation of any description so received.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(7) If the relevant event is the permanent discontinuance of the trade before the occurrence of an event within subsection (3), (4), (5) or (6), the disposal value is the same as the disposal value for the last-mentioned event.

(8) If the relevant event is the grant of a right to use or otherwise deal with computer software for a consideration not consisting or not wholly consisting in money, the disposal value equals the consideration in money which would have been given if the right had been granted in the open market.

(9) If-

(a) the relevant event is the grant of a right to use or otherwise deal with computer software for no consideration or for a consideration in money lower than that which would have been given if the right had been granted in the open market; and

(b) the grantee's expenditure on the acquisition of the right cannot be taken into account in making allowances to him under section 112,

then, unless subsection (8) above applies, the disposal value equals the consideration in money which would have been given if the right had been granted in the open market.

(10) If the relevant event is the grant of a right to use or otherwise deal with computer software and subsection (8) or (9) above does not apply, the disposal value equals the aggregate of-

(a) the net consideration in money received by the grantor in respect of the grant;

(b) any insurance moneys received by him in respect of the computer software by reason of any event affecting the consideration obtainable on the grant; and

(c) so far as it consists of capital sums, any other compensation of any description so received.

(11) In the case of any other relevant event (not falling within section 114), the disposal value equals the price which the asset would have fetched if sold in the open market at the time of the event.

(12) In deciding for the purposes of subsection (2) above whether the disposal value of computer software or the right to use or otherwise deal with computer software exceeds the capital expenditure incurred by a person on its provision, the disposal value shall (for the purposes of that subsection only) be taken to be increased by the amount of any disposal value which, in respect of that person and that software or right, falls or has fallen to be taken into account for the purposes of section 112 by virtue of any previous event falling within section 106(3)(h).

(13) Where the person mentioned in subsection (2) above has acquired the asset as a result of a transaction which was, or a series of transactions each of which was between connected persons, that subsection shall have effect as if it referred to the capital expenditure on the provision of the asset incurred by whichever party to that transaction, or to any of those transactions, incurred the greatest such expenditure.

114 Decommissioning costs

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(1) The decommissioning of any machinery or plant used for the purposes of a ring-fence trade shall not be a relevant event for the purposes of sections 106B, 112 and 113 but the following provisions of this section shall have effect in relation to the decommissioning.

[S. 7/Ord. 12/19/w.e.f. 1/1/19.] [Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(2) Where machinery or plant used for the purposes of a ring-fence trade is decommissioned, then-

(a) if the person carrying on the trade replaces the machinery or plant by other machinery or plant, the net cost to him of the decommissioning shall be treated for the purposes of this Chapter as expenditure incurred by him on the provision of that other machinery or plant (in addition to the expenditure actually incurred on its provision); and

(b) if the person carrying on the trade does not replace the machinery or plant, the expenditure to be taken into account in accordance with section 112(4) under head A for the chargeable period related to the decommissioning shall be treated as increased by the net cost to him of the decommissioning.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(3) In subsection (2) above, any reference to the net cost of the decommissioning of any machinery or plant is a reference to the excess, if any, of the cost of the decommissioning over any moneys received for the remains of the machinery or plant.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(4) In this section, "**decommissioning expenditure**" means expenditure incurred by any person which, apart from subsection (6) below, would fall within subsection (2)(b) above and which is incurred-

(a) for the purposes of or in connection with the closing down of, or of any part of, that person's ring-fence trade in the whole or any part of a licensed area; and

(b) on the decommissioning of machinery or plant which has been brought into use for the purposes of that trade and which is or forms part of an offshore installation or a submarine pipe-line; and

(c) on decommissioning which is carried out, wholly or substantially, in order to comply with a decommissioning programme, or with any condition to which the approval of such a programme is subject.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(5) In subsection (4) above "**decommissioning programme**", "**offshore installation**" and "**submarine pipe-line**" have the same meaning as in Part V of the Offshore Minerals Ordinance 1994.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(6) If the decommissioning expenditure exceeds any moneys received for the remains of the machinery or plant concerned and the person incurring the decommissioning expenditure so elects, then-

(a) an allowance shall be made to that person, for the chargeable period in which the expenditure is incurred, of an amount equal to that excess; and

(b) subsection (2)(b) above shall not apply in relation to that excess.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(7) An election under this section-

(a) shall specify the decommissioning expenditure to which it relates and the amounts of any such moneys received as mentioned in subsection (6) above;

(b) shall be made by notice in writing given to the Commissioner not later than two years after the end of the chargeable period in which the decommissioning expenditure was incurred; and

(c) shall be irrevocable.

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(8) In any case where-

(a) a person ("**the former trader**") ceases to carry on a ring-fence trade; and

(b) within the period of three years immediately following the last day on which he carried on that trade, or within the further period that the Commissioner allows, the former trader incurs expenditure ("**post-cessation expenditure**") on the decommissioning of machinery or plant which falls within subsection (4)(b); and

(c) the post-cessation expenditure would have been decommissioning expenditure if the decommissioning had been carried out and the expenditure incurred before the cessation of the ring-fence trade; and

(d) apart from this section, the post-cessation expenditure would not be deductible in computing the income of the former trader for any purpose of this Ordinance,

then the former trader's expenditure on machinery or plant for the last chargeable period in which he carried on his ring-fence trade shall be treated for the purposes of section 112 as increased by so much of the post-cessation expenditure as exceeds any moneys received in the period referred to in paragraph (b) for the remains of the machinery or plant referred to in that paragraph.

[S. 5(1)/Ord. 17/2019/w.e.f. 1/1/2019.] [Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

(9) Where subsection (8) above applies, any moneys received as mentioned in that subsection shall not constitute income of the former trader for any purpose of this Ordinance.

(10) In any case where-

(a) an allowance is made or to be made, by virtue of subsection (6) or (8) above, for any chargeable period; but

(b) the whole or part of the allowance cannot be made because of an insufficiency of ring-fence income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the 10 immediately preceding periods (but the allowance may only be made against ring-fence income of an earlier period in so far as there is an insufficiency of ring-fence income for later periods).

[S. 5(2)/Ord. 17/2019/w.e.f. 1/1/2019.]

(11) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the provisions of subsections (8) and (10) above.

115 Effect of use partly for trade, etc., and partly for other purposes

(1) Where a person carrying on a trade incurs capital expenditure on the provision of machinery or plant partly for the purposes of his ring-fence trade and partly for other purposes, it shall be assumed for the purposes of sections 111, 112 and 114 that he incurred the expenditure on the provision of the machinery or plant wholly and exclusively for the purposes of another trade ("the notional trade") carried on by him separately from the ring-fence trade and any other trade carried on by him.

(2) In any case where-

(a) a person has incurred expenditure on the provision of machinery or plant for the purposes of a ring-fence trade; and

(b) that person is required to bring the disposal value of the machinery or plant into account for any chargeable period because in that period the asset ceases to be used mainly for the purposes of that trade,

it shall be assumed for the purposes of sections 111, 112 and 114 that, immediately after the beginning of that chargeable period, that person incurred capital expenditure equal to that disposal value on the provision of the machinery or plant wholly and exclusively for the purposes of another trade carried on by him separately from the ring-fence trade and any other trade carried on by him.

(3) Without prejudice to section 106(3)(a) to (c), it shall be assumed for the purposes of section 112 that the notional trade is permanently discontinued on the machinery or plant beginning to be used wholly for purposes other than those of the ring-fence trade.

(4) The allowance or charge under section 112 which, on the above assumptions, and having regard to subsection (5) below, would fall to be made for any chargeable period in the case of the notional trade-

(a) shall be reduced to such extent as may be just and reasonable -having regard to all the relevant circumstances of the case and, in particular, to the extent to which the machinery or plant was used in that chargeable period otherwise than for the purposes of the actual trade; and

(b) shall, as so reduced, be made for that chargeable period in the case of the actual trade.

(5) If an allowance under section 112 falling to be made by virtue of this section for any chargeable period in the case of the actual trade is not claimed or is reduced in amount in accordance with an election under section 105(6) then, in determining the allowance or charge under section 112 which would fall to be made for any subsequent chargeable period in the case of the notional trade, any allowance falling to be made in the case of that trade for the first-mentioned chargeable period shall be treated as not claimed or, as the case may require, as proportionately reduced.

Other depreciation allowances

116 Initial allowances and writing-down allowances for capital expenditure

(1) Subject to subsections (2) and (3) and to sections 105 and 106, where in the basis period for a chargeable period a person carrying on a business incurs expenditure in the acquisition, enhancement or construction of-

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(a) any plant, machinery, renewable energy technology or vehicle, including aircraft but not including ships;

(b) any building;

(c) any ship; or

(d) any car park or hard standing;

(e) a road;

(f) ....

[S. 4(a)/Ord. 10/15/w.e.f. 24/12/15 (as corrected by S.R. & O. 3/16/w.e.f. 1/1/16); S. 8(a)/Ord. 6/16/w.e.f. 1/1/16; and S. 11(a)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

which is or is to be used for the purposes of the business, then in computing that person's chargeable income for that and subsequent chargeable periods a writing-down allowance must be made in accordance with the provisions of this section.

[S. 4(b)/Ord. 5/15/w.e.f. 1/7/15 (as corrected by S.R. & O. 3/16/w.e.f. 1/1/16).]

(1A) Where a car park or hard standing is being sold, its disposal value must be determined in accordance with section 113.

[S. 4(c)/Ord. 5/15/w.e.f. 1/7/15 (as corrected by S.R. & O. 3/16/w.e.f. 1/1/16).]

(1B) ....

[S. 8(b)/Ord. 6/16/w.e.f. 1/1/16; and S. 11(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(2) An allowance may not be made under this section or section 117 in relation to any expenditure on scientific research within the meaning of section 107 or any expenditure falling within section 111(1)(a), (b) or (c).

[S. 12(3)/Ord. 23/03/w.e.f. 1/1/04 and s. 18(2)/Ord. 2/11/w.e.f. 1/1/11.]

(3) . . .

[S. 12(4)/Ord. 23/03/w.e.f. 1/1/04.]

(4) Where a person carrying on a business claims an allowance under this section in respect of a capital asset which is to be used partly for purposes other than the purposes of the business, the expenditure incurred on the acquisition or enhancement of the asset shall be apportioned between the different uses.

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(5) Where a person incurs expenditure on the acquisition or enhancement of a capital asset which is to be used for the purposes of a business before he carries on that business, he shall be deemed for the purposes of this section to have incurred that expenditure on the first day on which he commences to carry on that business.

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(6) In the case of any ship, a writing-down allowance equal to 20 per cent of the expenditure incurred in acquiring or enhancing the ship shall be made.

[S. 12(5)/Ord. 23/03/w.e.f. 1/1/04; and S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(6A) In the case of renewable energy technology, plant, machinery or vehicle (including aircraft), writing down allowances must be made under section 117.

[S. 40(d)/Ord. 5/15/w.e.f. 1/7/15; S. 8(b)/Ord. 6/16/w.e.f. 1/1/16; and S. 11(c)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(7) . . .

[S. 12(5)/Ord. 23/03/w.e.f. 1/1/04.]

(8) . . .

[S. 12(5)/Ord. 23/03/w.e.f. 1/1/04.]

(9) Unless subsection (10) applies-

(a) the writing-down allowance for a building (other than a building in Camp) is 10 per cent of the expenditure incurred in acquiring, constructing or enhancing the building; and

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(b) the writing-down allowance for a building in Camp (other than farmhouses) is 25 per cent of the expenditure incurred in acquiring, constructing or enhancing the building.

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(c) the writing down allowance for a farmhouse is 10 per cent of the expenditure incurred in acquiring, constructing or enhancing the building.

[S. 8(c)/Ord. 6/16/w.e.f. 1/1/16 ; and S. 11(d)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(9A) An allowance may not be claimed under subsection (9) for a building outside the Falkland Islands which is let for residential use.

[S. 18(4)/Ord. 2/11/w.e.f. 1/1/11.]

(10) In the case of a building used as residential accommodation, an allowance shall not be made under subsection (9)-

(a) except as provided by subsection (11), where the building is occupied by the person claiming the allowance or by a person connected with that person;

(b) except as provided by subsection (11), where the building is occupied by a major shareholder of the person claiming the allowance or by a person connected with such a shareholder;

(c) except as provided by subsection (12), where the freehold title or lease out of which the tenancy or occupation of the building derives passes to the ownership of any person other than the person who originally incurred the expenditure involved in the construction or enhancement of the building.

[S. 14/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(11) Subsection (4) or, (10)(a) and (b) do not apply where the Commissioner is satisfied that the building is or is to be occupied principally for agricultural purposes.

[S. 11(e)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(12) Subsection (10)(c) does not apply where the Commissioner is satisfied-

(a) that the new owner is engaged in the business of agriculture; and

(b) that the building is or is to be occupied principally for agricultural purposes.

(13) In any case where a building is or is to be used for more than one purpose, this section shall apply in relation to each part separately and such apportionment of expenditure shall be made as between the different parts as is in the opinion of the Commissioner just and equitable.

(13A) Subsection (13) does not apply to the depreciation allowance claimed in respect of a farmhouse.

[S. 11(f)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(14) The writing-down allowance —

(a) for a car park, hard standing or consolidated laydown, is 5 per cent of the expenditure incurred in the construction or enhancement of it;

(b) for a road is 5 per cent of the expenditure incurred in constructing or enhancing the road up to £100,000 per kilometre of road; and

(c) for a jetty is 5 per cent of the expenditure incurred in the construction or enhancement of it.

[S. 4(b)/Ord. 10/15/w.e.f. 24/12/15 (as corrected by S.R. & O. 3/16/w.e.f. 1/1/16); and S. 11(g)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

117. Writing-down allowances and balancing charges for renewable energy technology, plant, machinery and vehicles (including aircraft)

[S. 12(d)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(1) Subject to section 116(2), a writing-down allowance shall be made for a chargeable period in accordance with subsection (2) below to a person carrying on a business in relation to expenditure incurred by him on the acquisition, construction or enhancement of any renewable energy technology, plant, machinery or vehicles (including aircraft) which is or is to be used for the purposes of the business, by reference to the amount (if any) by which A exceeds (B + C) where as respects that chargeable period-

[S. 12(a)(i)/Ord. 10/20/effective for the period of account starting on or after 1/1/21; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

A is the amount of his expenditure on the acquisition, construction or enhancement of any renewable energy technology, plant, machinery or vehicles (including aircraft) in the basis period for that period or any earlier period;

[S. 12(a)(ii)/Ord. 10/20/effective for the period of account starting on or after 1/1/21; S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

B is the amount of any writing-down or initial allowances previously made in respect of that expenditure; and

C is the disposal value of any asset-

(a) expenditure on the acquisition, construction or enhancement of which is qualifying expenditure taken into account under A above; and

(b) in respect of which, in the basis period for the chargeable period, any one of the relevant events first occurs,

[S. 12(a)(iii)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

and section 113 shall apply for the purposes of this section as it applies for the purposes of section 111.

(2) In the case where the written-down value for all items consisting of renewable energy technology, plant, machinery and vehicles (including aircraft) is more than £1,000, the writing-down allowance to be made under subsection (1) shall -

[S. 12(b)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(a) where paragraph (b) does not apply, be equal to 40 per cent of the amount of the excess found under subsection (1) above (proportionately reduced or increased if the period is a period of less or more than a year, or the business has been carried on for part only of the period);

[S. 12(7)/Ord. 23/03/w.e.f. 1/1/04.]

(b) where during the basis period for the chargeable period in question the business is permanently discontinued, be equal to the whole of the amount of the excess so found.

(2A) In the case where the written-down value for all items consisting of renewable energy technology, plant, machinery and vehicles (including aircraft) is £1,000 or less, and subsection (2)(b) does not apply, the writing down allowance shall be the amount that reduces the written down value to zero.

[S. 12(c)/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

(3) In any case where-

(a) an allowance is made or to be made, by virtue of subsection (2)(b) above, for the chargeable period in which the person claiming the allowance ceases to carry on his business; but

(b) the whole or part of the allowance cannot be made because of an insufficiency of income for that chargeable period,

the allowance, or that part of the allowance to which effect has not been given, shall be made for the three immediately preceding periods (but the allowance may only be made against income of an earlier period in so far as there is an insufficiency of income for later periods).

(4) For any chargeable period for which C exceeds (A-B), where C, A and B have the same meanings as in subsection (1), there shall be made on the person concerned a balancing charge on an amount equal to that excess.

118 …

[S. 13/Ord. 10/20/effective for the period of account starting on or after 1/1/21.]

119 Balancing charges and allowances

(1) This section applies where-

(a) during the basis period for a chargeable period ("the relevant period") an event occurs in relation to a capital asset in respect of which an allowance has been made under section 116 (but not section 117) to any person carrying on a business; and

(b) that event is a relevant event (disregarding section 114).

[S. 18(a)/Ord. 23/02/w.e.f. 1/1/03.]

(2) Where subsection (1) above applies-

(a) if the written-down value of the asset exceeds the disposal value, there shall be allowed in computing the owner's chargeable income for the relevant period a deduction equal to that excess; or

(b) if the disposal value exceeds the written down value of the asset, a balancing charge shall be made of an amount equal to that excess.

[S. 18(b)/Ord. 23/02/w.e.f. 1/1/03.]

(3) Section 113 shall apply for the purposes of subsection (2) as it applies for the purposes of section 111

[S. 18(b)/Ord. 23/02/w.e.f. 1/1/03.]

(4) Where (by virtue of subsection (3) or otherwise) the moneys referred to in subsection (2) exceed the expenditure in respect of which the allowance was made, the amount of the excess shall be disregarded for the purposes of that subsection.

[S. 18(c)/Ord. 23/02/w.e.f. 1/1/03.]

Supplementary provisions

120 Assets transferred on transfer of business

(1) In any case where-

(a) on or after 1st January 1995, a business is transferred by an individual, either alone or in partnership, to a company; and

(b) the transfer includes the transfer of an asset used in that business as respects which an allowance under this Chapter has been made to or disclaimed by the transferor; and

(c) section 127(1)(a) applies to the transfer,

then, whether or not the transferor makes a claim under that section and whether or not such a claim is allowed, the transferor may elect that the provisions of this section shall apply in relation to that asset.

(2) Section 108 or 119 shall not apply in relation to the transfer of the asset and the transfer of the asset shall not be a relevant event, but all such allowances and charges shall be made to and on the transferee under and in accordance with this Chapter as would have fallen to be made if the transferor had continued to carry on the business.

(3) Subject to subsection (4) below, an election under subsection (1) above shall be made by notice which shall be irrevocable, and where more than one asset is transferred, the transferor may make an election under this section with respect to all or any of those assets.

(4) An election under subsection (1) shall be made before the end of the year immediately following the year in which the transfer took place or, if later, 31st December 2003

[S. 19/Ord. 23/02/w.e.f. 1/1/03.]

(5) All such adjustments shall be made as may be necessary in consequence of an election being made under this section, whether by way of assessments to tax on the company or by repayment or discharge of tax or otherwise.

121 Contributions to acquisition costs

(1) Expenditure shall not be regarded for any of the purposes of this Chapter as having been incurred by any person in so far as it has been or is to be met directly or indirectly by any other person.

(2) In considering, for the purposes of this section how far any expenditure has been or is to be met directly or indirectly by any person other than the person incurring the expenditure, there shall be left out of account-

(a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use; and

(b) any expenditure in respect of which, apart from the provisions of this section, an allowance could not be made under section 122 and not being expenditure which is allowed to be deducted in computing the profits or gains of a business carried on by that person.

(3) In determining for the purposes of subsection (2)(b) above whether an allowance could be made under the provisions of section 122, it shall be assumed that the person by whom expenditure has been or is to be met is within the charge to tax, whether or not that is in fact the case.

(4) Subsection (2)(b) shall not apply for the purposes of sections 107 to 109

122 Allowances in respect of contributions to capital expenditure

(1) Where a person, for the purposes of a business carried on or to be carried on by him contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from the provisions of section 121-

(a) would have been regarded as wholly incurred by another person; and

(b) in respect of which an allowance would have been made under this Chapter,

then, subject to the following provisions of this section, such allowances, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that business, of that or a similar asset, as the context may require.

(2) For the purposes of any allowance given by virtue of subsection (1) above in respect of any asset which is machinery or plant, that asset shall be treated as belonging to the person making the contribution in respect of which the allowance is given at any time when it belongs, or is treated under this Chapter as belonging, to the recipient of the contribution.

(3) Subsection (1) above shall not apply where the person making the contribution and the person receiving it are connected persons.

(4) Subject to the following subsections, for the purpose of determining the amount of the allowances and the manner in which they are to be made, the asset shall be deemed to continue at all material times to be in use for the purposes of the business.

(5) Where, when the contribution was made, the business for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the business or any part of the business-

(a) where the transfer is of the whole business, writing-down allowances for chargeable periods ending after the date of transfer shall be made to the transferee, and shall not be made to the transferor;

(b) where the transfer is of part only of the business, paragraph (a) above shall have effect with respect to so much of the allowance as is properly referable to the part transferred.

123 Apportionment of sale, etc., receipts

(1) This section applies in any case where a capital asset in respect of which a writing-down allowance under this Chapter has been made has been sold or destroyed together with or at the same time as any other property and-

(a) the consideration received on the sale or the insurance recoveries is a sum which relates to all the property sold or the insurance recoveries is a sum which relates to all the property destroyed or the subject of the claim under the relevant insurance contract;

(b) the total consideration received on the sale has by agreement or arrangement between the parties been apportioned between the various items sold at the same time by the same vendor to the same purchaser, and whether by or under the same contract or under separate contracts, or similarly insurance recoveries have been apportioned between insured and insurer.

(2) In any case falling within paragraph (a) of subsection (1)-

(a) the Commissioner may agree with the former and new owners the apportionment of the sum referred to in that paragraph between the various items of property to which it relates;

(b) if no such agreement is reached, the Commissioner may apportion the sum referred to in subsection (1)(a) between the various items of property to which it relates.

(3) In any case falling within paragraph (b) of subsection (1), the Commissioner may-

(a) agree with the parties an apportionment of the sale consideration or insurance recoveries between the various items of property; or

(b) if he considers that that apportionment would (if agreed by him) afford an unjust tax advantage to the new owner or former owner, apportion the sale consideration or the insurance recoveries between the various items of property in accordance with his view of the true value of such items.

(4) The values attributed to any items of property in accordance with this section shall apply for the purposes of this Chapter both in relation to the new owner and (as to the operation of section 119(2)(b)) in relation to the former owner.

(5) The Commissioner shall give notice to the persons affected of any apportionment made or agreed by him in pursuance of this section.

124 . . .

[S. 6/Ord. 6/06/w.e.f. 1/3/06.]

124A Restriction of writing down allowance by reference to asset value in accounts

(1) In this section —

"**person's accounts**" means the accounts of a person or a connected person of the person;

"**connected person**" means a person who is connected with another person for the purpose of the other person's business;

"**temporary period**" means the period, not exceeding 2 years, for which a person uses plant or machinery in the Falkland Islands in connection with the person's business;

"**Falkland Islands**" includes controlled waters;

"**ordinary reduction**" means a reduction, made in accordance with an accounting depreciation policy that accords with generally accepted accounting principles, as it would operate without extraordinary upward revaluations in contemplation of the use of plant and machinery in the Falkland Islands or extraordinary downward revaluations referable to a period of use in the Falkland Islands;

"**person**" means a person who is —

(a) carrying on a business in the Falkland Islands; or

(b) resident in the Falkland Islands.

(2) This section applies if a person claims a writing down allowance under this Chapter in respect of plant or machinery that is —

(a) brought into the Falkland Islands in connection with the person's business;

(b) in the Falkland Islands for a temporary period; and

(c) used by the person in circumstances in which it is reasonable to expect that the person or a connected person of the person will use the plant or machinery outside the Falkland Islands after the temporary period ends.

(3) A writing down allowance for a chargeable period must not exceed the ordinary reduction in the value of the plant or machinery that is specified in the person's accounts attributable to the chargeable period and to the period of use of the plant or machinery in connection with the person's business in the Falkland Islands during the chargeable period.

(4) The Commissioner may direct that this section applies in relation to the plant and machinery specified in the person's accounts with the modifications specified by the Commissioner in the direction (if any) if the Commissioner is not satisfied that —

(a) the treatment of the plant or machinery in the person's accounts is in accordance with accounting policies generally operated by the person and, if applicable, the connected person;

(b) those accounting policies reflect generally accepted accounting practice; and

(c) the treatment of the plant or machinery in the accounts reflects ordinary reductions.

(5) The person or the connected person must comply with the Commissioner's direction made under subsection (4).

(6) If more than one chargeable period occurs in the person's accounting period, the reduction in value of plant or machinery used by the person in the Falkland Islands during the accounting period is to be apportioned on a just and reasonable basis between those chargeable periods.

[S. 7/Ord. 6/15/w.e.f. 1/10/15 (as corrected by S. R. & O. 11/15/w.e.f. 1/10/15) and S. 6/Ord. 17/2019/w.e.f. 1/1/2019.]

CHAPTER III
LOSS RELIEF FOR BUSINESSES

125 Restrictions on loss relief

(1) Effect shall be given to this Chapter by a claim, but a claim may not be made in respect of a loss sustained in any business unless the business was being carried on, during the period in which the loss was sustained, on a commercial basis and with a view to the realisation of profits.

(2) Relief shall not be given in respect of the same loss or the same portion of a loss under more than one provision of this Ordinance.

(3) A claim for a loss under sections 126, 127 and 128 must be made on the return under section 12 or 30(1) for the period when the loss was sustained and must show on the return where and how the loss is being utilised.

[S. 12&Sch/Ord. 8/21/comes into effect for the period of account starting on or after 1 January 2022.]

126 Carry forward of business losses for individuals

(1) Where a loss is sustained in any period of account of a business carried on (either alone or in partnership) by any person who is within the charge to income tax for the relevant year of assessment in respect of that business and the loss cannot be wholly set off against that person's income from other sources chargeable to tax for the same year, the amount of the loss shall, to the extent to which it is not set off against his income from other sources chargeable to tax for the same year-

(a) be carried back and-

(i) set off against the profits of that business arising in the immediately preceding period of account; and

(ii) provided that person was carrying on that business in the preceding year, in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment immediately preceding the relevant year; or

(b) be carried forward and (so long as he continues to carry on the business)-

(i) shall be set off against the profits of that business arising in the following period of account, and in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment following the relevant year;

(ii) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income of that person from other sources chargeable to tax for the year of assessment following the relevant year,

and so on for subsequent years in succession until the amount of such loss is exhausted.

[S. 13(1)/Ord. 23/03/w.e.f. 1/1/04.]

(2) A company may make a claim under this section in respect of a loss sustained in a period-

(a) as respects which the company was within the charge to income tax; or

(b) as respects which the company was exempt from tax by virtue of the Taxes and Duties (Special Exemptions) Ordinance,

notwithstanding that the company is, as respects subsequent periods, within the charge to corporation tax.

(3) A claim may not be made under this section more than six years after the end of the period of account in which the loss was incurred.

(4) In this section "the relevant year of assessment", in relation to a period of account, is the year of assessment for which income arising in that period is chargeable to income tax.

127 Allowance of business losses for individuals in cases of transfer of business

(1) In any case where-

(a) a business carried on by an individual, either alone or in partnership, is transferred to a company and in consideration for the transfer the company issues shares in the company to that individual; and

(b) prior to the transfer a loss was sustained in the course of carrying on the business but not set off against the profits of the business; and

(c) the amount of the loss has not been and is not being set against any other income of the individual (either in that year or any earlier year),

then, subject to subsections (2) to (7) below, in computing his chargeable income for any year of assessment following the year in which the transfer takes place, the individual may set against

any dividend he receives in respect of those shares in the immediately preceding year of assessment, an amount equal to the amount of that loss.

(2) The Commissioner may disallow any claim under subsection (1) above if in all the circumstances of the case he is of the opinion that it should not be allowed.

(3) Subject to subsection (7) below, where a business is transferred as mentioned in subsection (1), the acquiring company may not deduct any losses suffered in the course of the business prior to the date of the transfer from the profits of the business accruing on or after that date or from any other profits or income.

(4) Subject to subsection (5) below, a claim for relief under subsection (1) shall be irrevocable and have effect in relation to all losses sustained in the business by the individual not otherwise set off against any income of the individual.

(5) A claim for relief under subsection (1) above shall be made before the expiry of the period of six years beginning with the date of the transfer and shall have effect for all years of assessment beginning after the date of the transfer.

(6) All such adjustments shall be made as may be necessary in consequence of a claim being made under this section, whether by way of repayment or discharge of tax or otherwise.

(7) If a claim is not made by the individual under this section or such a claim is disallowed, the company to which the business is transferred may make a claim to set off the amount of the losses sustained in the business before the transfer in accordance with section 128, and that section shall apply in relation to any such loss as if it had been sustained in the business immediately after the transfer was effected; but-

(a) a claim shall not be allowed by virtue of this subsection unless the individual has consented, in writing, to the claim being made; and

(b) the individual may not make a claim under subsection (1) after giving his consent for the purposes of paragraph (a) above.

128 Loss relief for companies

(1) Subject to section 153, where, in any accounting period, a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against income of that accounting period or of the immediately preceding accounting period.

[S. 13(2)/Ord. 23/03/w.e.f. 1/1/04.]

(2) Subject to section 153, where in any accounting period a company carrying on a business incurs a loss in the business, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any income of the company in succeeding accounting periods; and where such a claim is made (and so long as the company continues to carry on the business) the amount of the loss, or so much of that amount as cannot, on a claim (if made) under subsection (1) above, be set off against income of an earlier accounting period-

(a) shall be set off against the profits of that business arising in the following accounting period; and

(b) in so far as it cannot or cannot wholly be set off against such profits, it shall be set off against income from other sources arising in that period,

and so on for subsequent accounting periods in succession until the amount of such loss is exhausted.

(3) The amount of a loss incurred in a business in an accounting period shall be computed for the purposes of this section in the same way as business income from the business in that period would have been computed.

(4) For the purposes of this section "business income" means, in relation to any business, the income which falls or would fall to be included in respect of the business in the total profits of the company.

(5) In this section references to a company carrying on a business refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(6) A claim under subsection (1) above may only be made within the period of two years immediately following the accounting period in which the loss is incurred.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(7) A claim under subsection (2) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years.

129 Change in ownership of company: disallowance of trading losses

(1) If-

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a business carried on by the company; or

(b) at any time after the scale of the activities in a business carried on by a company has become small or negligible, and before any considerable revival of the business, there is a change in the ownership of the company,

relief shall not be given under section 128 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a business" includes-

(a) a major change in the type of property dealt in, or services or facilities provided, in the business; or

(b) a major change in customers, outlets or markets of the business,

and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

(5) Where relief in respect of a company's losses has been restricted under this section then, in applying the provisions of Chapter II of this Part about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made under that Chapter for any chargeable period of the company before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

(6) In applying subsection (5) above it shall be assumed that any profits are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(7) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.

(8) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by the Commissioner given for the purposes of this section, state whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities or of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

130 Rules for ascertaining change in ownership of company

(1) For the purposes of section 129 there is a change in the ownership of a company-

(a) if a single person acquires more than half the ordinary share capital of the company; or

(b) if two or more persons each acquire a holding of 5 per cent or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or

(c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent unless it is an addition to an existing holding and the two holdings together amount to 5 per cent or more of the ordinary share capital of the company.

(2) In applying subsection (1) above-

(a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;

(b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;

(c) to decide for the purposes of subsection (1)(b) or (a) above if any person has acquired a holding of at least 5 per cent, or a holding which makes at least 5 per cent when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;

(d) any acquisition of shares under the will or on the intestacy of a deceased person and, if it is shown that the gift is unsolicited and made without regard to the provisions of section 129, any gift of shares shall be left out of account.

[S. 14(1)/Ord. 23/03/w.e.f. 1/1/04.]

(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 129, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

(4) Where section 129 has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of section 129 if-

(a) immediately before the change the company is the 75 per cent subsidiary of another company; and

(b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent subsidiary.

(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then-

(a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;

(b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and

(c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(7) In subsection (6) above-

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means-

(a) any ordinary share capital of another company; and

(b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

(8) For the purposes of this section-

(a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;

(b) the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies shall be determined in accordance with subsections (5) to (11) of section 207; and

(c) "shares" includes stock.

(9) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

CHAPTER IV
GROUP RELIEF

131 Surrender of relief between members of groups

(1) Subject to and in accordance with this Chapter, relief for trading losses and other amounts eligible for relief from corporation tax may be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief" in accordance with subsection (8) below.

(2) Group relief shall not be available unless the claimant company and the surrendering company are resident in the Falkland Islands throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(3) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same 75 per cent group.

(4) Group relief shall also be available in a case where-

(a) the surrendering company and the claimant company are both members of the same 51 per cent group; and

(b) none of the members of the group carries on a ring-fence trade at any relevant time.

(5) Group relief shall also be available where-

(a) the claimant company is one of two companies each of which directly and beneficially owns 50 per cent of the ordinary share capital in the surrendering company; and

(b) none of those three companies carries on a ring-fence trade at any relevant time.

(6) For the purposes of subsections (4) and (5) above a time is relevant as respects any company if at that time the company is a member of a 51 per cent group or is one of three companies two of which directly and beneficially own 50 per cent of the ordinary share capital of the third.

(7) Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.

(8) If in any accounting period the surrendering company has incurred a loss in carrying on a business, the amount of the loss may be set off for the purposes of corporation tax against the total income of the claimant company for its corresponding accounting period.

(9) A payment for group relief-

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes; and

(b) shall not for any of the purposes of the enactments relating to corporation tax be regarded as a distribution,

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

132 Corresponding accounting periods

(1) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.

(2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide-

(a) the amount which may be set off against the total income of the claimant company for the corresponding accounting period shall be reduced by applying the fraction-

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

(if that fraction is less than unity); and

(b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction-

$$\frac{A}{C}$$

(if that fraction is less than unity);

where-

A is the length of the period common to the two accounting periods;

B is the length of the accounting period of the surrendering company; and

C is the length of the corresponding accounting period of the claimant company.

133 Companies joining or leaving group

(1) Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant -company either-

(a) are members of the same group; or

(b) fulfil the requirements of section 131(5)(a) with respect to each other,

throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.

(2) Where on any occasion two companies become or cease to be members of the same group, or begin or cease to fulfil the requirements of section 131(5)(a), then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that-

(a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins, the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection); and

(b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and

(c) the amount of total income for the true accounting period of the company against which group relief may be allowed in accordance with section 131(8) is also apportioned to the component accounting periods,

and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.

(3) Where the one company is the surrendering company and the other company is the claimant company-

(a) references in subsection (1) above and section 132 to accounting periods shall be construed in accordance with subsection (2) above (so that if the two companies are members of the same group in the surrendering company's accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);

(b) references in section 132 to income, and amounts to be set off against the income, shall be construed in accordance with subsection (2) above (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).

134 Exclusion of double allowances

(1) Without prejudice to section 125, relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.

(3) Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and-

(a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 133; and

(b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,

those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).

(4) If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.

(5) Subject to subsection (6) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and-

(a) all the claims so made are admissible only by virtue of section 133(2) and (3); and

(b) there is a part of the claimant company's accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,

the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company's accounting period (but was a member during the remainder of that accounting period).

(6) If claims falling within subsection (5) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.

135 Group relief by way of substitution for loss relief

(1) Group relief may be given in respect of a loss notwithstanding that relief has been given in respect of it under section 128

(2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 128

(3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the Commissioner notice of consent to surrender relating to the loss.

(4) For the purposes of this section relief under section 128 shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.

136 Claims

(1) A claim for group relief for an accounting period of a company, or the withdrawal of such a claim, may not be made if-

(a) the company has been assessed to corporation tax for the period; and

(b) the assessment has become final and conclusive.

(2) Subsection (1) above shall not apply in the case of a claim, or withdrawal of a claim, made before the end of two years from the end of the period.

(3) Subject to subsection (5), a claim for an accounting period of a company, or the withdrawal of such a claim, may not be made after the end of six years from the end of the period.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(4) …

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) A claim for an accounting period of a company, or the withdrawal of such a claim, may be made after the end of six years from the end of the period if-

(a) the company has been assessed to corporation tax for the period before the end of six years from the end of the period;

(b) the company has appealed against the assessment; and

(c) the assessment has not become final and conclusive.

(6) A claim for an accounting period of a company, or withdrawal of such a claim, may not be made under subsection (5) after the end of six years and three months from the end of the period.

(7) A claim, or withdrawal of a claim, shall be made by being included in the accounts and other information submitted by the company in accordance with section 30 for the period for which the claim is made.

(8) A claim may be made for less than the full amount available

(9) A claim, other than one under subsection (5) above, shall be for an amount which is quantified at the time the claim is made.

(10) A claim under subsection (5) above shall be expressed to be conditional, as to the amount claimed, on, and only on, the outcome of one or more relevant matters specified in the claim, and for the purposes of this subsection a matter is relevant if it is relevant to the determination of the assessment of the claimant company to corporation tax for the period for which the claim is made.

137 Requirements as to consent of surrendering companies

(1) A claim shall require the consent of the surrendering company.

(2) Consent to surrender shall be of no effect unless, at or before the time the claim is made, notice of consent is given by the consenting company to the Commissioner.

(3) Notice of consent to surrender, in the case of consent by the surrendering company, shall be of no effect unless it contains the following particulars-

(a) the name of the surrendering company;

(b) the name of the company to which relief is being surrendered;

(c) the amount of relief being surrendered;

(d) the accounting period of the surrendering company to which the surrender relates.

(4) A claim shall be of no effect unless it is accompanied by a copy of the notice of consent to surrender given for the purposes of this section by the surrendering company.

(5) In the case of consent to surrender by the surrendering company, consent which relates to relief which is the subject of more than one claim under section 136(5) shall be of no effect unless it specifies an order of priority in relation to the claims.

138 Recovery of excess relief

(1) If the Commissioner discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax in the amount which ought in his opinion to be charged.

(2) Subsection (1) above is without prejudice to the making of an assessment under section 173 and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

(3) All such assessments or adjustments of assessments shall be made as may be necessary to give effect to a claim or the withdrawal of a claim.

(4) An assessment under this section shall not be out of time if it is made-

(a) in the case of a claim, within one year from the date on which an assessment of the claimant company to corporation tax for the period for which the claim is made becomes final and conclusive; and

(b) in the case of the withdrawal of a claim, within one year from the date on which the claim is withdrawn.

[S. 9(3)/Ord. 6/06/w.e.f. 1/3/06.]

139 Interpretation of Chapter IV

(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) In this Chapter-

"claim" means a claim for group relief under section 131;

"claimant company" has the meaning given by section 131(1);

"group relief" has the meaning given by section 131(1); and

"surrendering company" has the meaning given by section 131(1).

(3) For the purposes of this Chapter-

(a) two companies shall be deemed to be members of a 75 per cent group of companies if one is the 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of a third company;

(b) two companies shall be deemed to be members of a 51 per cent group if one is the 51 per cent subsidiary of the other or if both are 51 per cent subsidiaries of a third company;

(c) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent subsidiaries and which are trading companies; and

(d) "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) For the purposes of the application of section 207 in relation to any provision of this Chapter, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) In determining for the purposes of this Chapter whether one company owns any share capital in another, the other company shall be treated as not being the owner-

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade;

[S. 14(2)/Ord. 23/03/w.e.f. 1/1/04.]

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt;

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the Falkland Islands.

[S. 14(2)/Ord. 23/03/w.e.f. 1/1/04.]

(6) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent or 75 per cent subsidiary or a 90 per cent subsidiary of another company ("the parent company") it must not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time-

(a) the parent company is beneficially entitled to more than 50 per cent or not less than 75 per cent or, as the case may be, not less than 90 per cent of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to more than 50 per cent or not less than 75 per cent or, as the case may be, not less than 90 per cent of any assets of the subsidiary company available for distribution to equity holders on a winding-up,

and Schedule 1 shall apply for the purposes of this subsection as it applies for the purposes of section 38(10)(b).

[S. 21/Ord. 16/13/w.e.f. 1/1/14.]

PART VI
SPECIAL PROVISIONS FOR RING FENCE TRADES AND RELATED BUSINESSES

CHAPTER I
GENERAL PROVISIONS

140 Interpretation of Part VI

(1) In this Part-

"crude", where the reference is to petroleum being disposed of or appropriated crude, refers to its being so dealt with without having been refined (whether or not it has previously undergone initial -treatment);

"**decommissioning**" includes demolition and abandonment;

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

"gas" means petroleum which is gaseous at a temperature of 15 degrees Celsius and pressure of one atmosphere;

"initial storage", in relation to petroleum won in pursuance of a petroleum licence, means the storage of a quantity of petroleum so won not exceeding a quantity equal to 10 times the maximum daily production rate of such petroleum as planned or achieved (whichever is the greater), but does not include-

(a) the storing of petroleum as part of or in conjunction with the operation of a petroleum refinery; or

(b) deballasting; or

(c) conveying petroleum in a pipe-line;

"initial treatment", in relation to any petroleum won under the authority of a petroleum licence, means any of the following things (wherever carried out), that is to say-

(a) subjecting the petroleum to any process the sole purpose of which is to enable the petroleum to be safely stored, safely loaded into a tanker or safely accepted by a petroleum refinery; or

(b) separating petroleum consisting of gas from other petroleum; or

(c) separating petroleum consisting of gas of a kind that is transported and sold in normal commercial practice from other petroleum consisting of gas; or

(d) liquefying petroleum consisting of such gas for the purpose of transporting it; or

(e) subjecting the petroleum to any process in order to secure that petroleum disposed of crude has the quality that is normal for petroleum got from the same source and disposed of crude,

but does not include-

(i) the storing of petroleum, even where this involves the doing to the petroleum of things within any of paragraphs (a) to (e) of this -definition; or

(ii) any activity carried on as part of, or in association with, the refining of petroleum not consisting of gas or any activity the sole or main purpose of which is to achieve a chemical reaction in respect of petroleum consisting of gas; or

(iii) deballasting;

"petroleum" means any substance won or capable of being won under the authority of a petroleum licence but does not include any substance which in its natural condition does not, or did not, exist in strata in the Falkland Islands or a designated area;

"petroleum extraction activities" means any activities carried on in connection with-

(a) searching for petroleum;

(b) extracting petroleum;

(c) transporting petroleum;

(d) effecting initial treatment or initial storage of petroleum;

(e) decommissioning plant or machinery previously used or designed to be used in connection with an activity within paragraphs (a) to (d);

[S. 8(1)/Ord. 6/15/w.e.f. 1/10/15, subject to the provision in section 8(2) that section 8 of Ordinance 6 of 2015 shall be treated as always having had effect.]

[Sch. 2/Ord. 1/2026/w.e.f. 18/05/26]

"petroleum rights" means rights to petroleum to be extracted or to interests in or to the benefit of such petroleum;

"production purposes", in relation to a licensed area, means any of the following purposes, that is to say-

(a) carrying on drilling or production operations within the field; or

(b) pumping petroleum won under the licence to the place where the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one place at which he could reasonably be expected to deliver it, the one nearest to the place of extraction; or

(c) the initial treatment of petroleum won under the authority of the licence;

"relevantly appropriated", in relation to any petroleum, means appropriated to refining or to any use except use for production purposes, and "relevant appropriation" shall be construed accordingly;

"refining", in relation to petroleum, does not include subjecting it to initial treatment and "refined" and "refinery" shall be construed accordingly;

"ring-fence income" means income arising from a ring-fence trade; and

"ring-fence trade" means a trade consisting of any of the activities referred to in section 150(1) (whether or not the trade is a separate trade by virtue of that provision).

(2) In this Part any reference to a company being a member of a group shall be construed as a reference to a 75 per cent group within the meaning of section 139, disregarding subsection (5)(c) of that section and section 131(2).

(3) In any case where two or more persons each has an interest in the petroleum won under the authority of a licence, the definition of "initial storage" as it applies for the purposes of paragraph (d) of the definition of "petroleum extraction activities" shall have effect, in relation to each of those persons, as if the reference to the maximum daily production were a reference to an appropriate proportion of that maximum daily rate.

(4) For the purposes of this Part, two companies are associated with one another if-

(a) one is a 51 per cent subsidiary of the other;

(b) each is a 51 per cent subsidiary of a third company; or

(c) one is owned by a consortium of which the other is a member.

(5) For the purposes of subsection (4)(c) above, a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital.

(6) Without prejudice to subsection (5) above, for the purposes of this Part, two companies are also associated with one another if one has control of the other or both are under the control of the same person or persons; and section 210 shall apply for the purposes of this subsection.

CHAPTER II
TAXATION OF PETROLEUM RELATED CAPITAL GAINS

141 Chargeable gains and allowable losses

(1) This Chapter has effect for imposing a charge to tax in respect of chargeable gains accruing to a person on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights, but in this Chapter "exploration or exploitation rights" does not include intellectual property.

(2) Except as otherwise provided, every capital gain accruing on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights is a chargeable gain.

(3) The amount of the gain accruing on a disposal shall be equal to the amount of the consideration for which the disposal is made, computed in accordance with the provisions of this Chapter, less any deductions permitted under those provisions.

(4) Except as otherwise expressly provided, all losses accruing to a person on the disposal of exploration or exploitation rights or of unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights shall be allowable losses, and the amount of a loss accruing on a disposal shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(5) Except as otherwise expressly provided, all the provisions of this Ordinance which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Ordinance to an allowable loss shall be construed accordingly.

142 Unquoted shares: supplementary provisions

(1) Where unquoted shares in a company deriving part only of their value directly or indirectly from exploration or exploitation rights are disposed of at any time and either a gain or a loss

accrues on the disposal, the amount of that gain or loss shall be apportioned on a just and reasonable basis between those rights and the other assets from which the shares derive their value.

(2) Section 141(2) and (4) shall not apply in relation to a disposal of shares which derive the whole of their value from an asset if the disposal of the shares is the occasion of the deemed disposal of the asset under section 148(2); and if the shares derive only part of their value from such an asset, then, for the purposes of this Chapter-

(a) the value of the shares shall be apportioned as between that part of their value and the remainder; and

(b) this Chapter shall apply only in relation to the remainder, all such apportionments of the consideration for their disposal being made as may be necessary to give effect to this paragraph.

(3) Where unquoted shares in a company deriving their value directly or indirectly from exploration or exploitation rights are disposed of at any time, the company shall by notice give the Commissioner within thirty days of the disposal particulars of the disposal; and the Commissioner may by notice given to any company which appears to him to be concerned in any such disposal require it to give him, within such time as may be specified in the notice (not being less than thirty days) such particulars of the disposal as are specified in the notice.

143 Chargeable gains taxed as income

(1) There shall be computed in accordance with this Ordinance-

(a) the total amount of chargeable gains accruing to a person in a chargeable period ("the relevant period"); and

(b) the total amount of allowable losses accruing to a person in the relevant period; and

(c) the amount (if any) by which the allowable losses which have accrued to that person in earlier chargeable periods beginning on or after 1st January 1996 exceed that person's total chargeable gains (so computed) for all such earlier chargeable periods.

(2) An allowable loss incurred by a company at any time shall not be taken into account under subsection (1) above at a later time unless-

(a) at least three-quarters of the ordinary share capital of the company belongs to the persons to whom three-quarters of that share capital belonged at the time the loss accrued, and

(b) if the company is a 51 per cent subsidiary of another body corporate, at least three-quarters of the ordinary share capital of the parent company belongs to the persons to whom three-quarters of that share capital belonged at the time the loss accrued.

Section 63(2), (3) and (4) shall apply to determine for the purposes of this subsection any question relating to the ownership of any share capital.

(3) Where as respects any person the amount found under paragraph (a) of subsection (1) above exceeds the aggregate of the amounts found under paragraphs (b) and (c), an amount equal to the excess shall be deemed for all the purposes of this Ordinance to be an amount of income

accruing to that person for the relevant period and subject to tax accordingly, but subject to the provisions of this Ordinance and in particular to subsection (4) below.

(4) In any case where an amount is deemed to be the income of any person by virtue of subsection (3) above-

(a) that income shall, for the purposes of section 28, be deemed to be ring-fence income of that person, whether or not that person carries on a ring-fence trade at any time during the relevant period;

(b) if that person is within the charge to tax for the relevant period by reason only of that income, then in relation to that person and that income-

(i) for the purposes of the assessment and collection of tax on chargeable gains (including the imposition of any civil or criminal penalty), any reference to an accounting period shall be construed as a reference to the relevant period;

(ii) in section 30(1), paragraph (b) shall not apply and for "that period of account" there shall be substituted "that year"; and

(iii) in section 168(2) for the words from "Part)" to the end there shall be substituted "on that income"; and

(c) if that person is within the charge to tax for the relevant period by reason of that and other income, then that income shall be deemed to have accrued to him immediately before the end of the accounting period which ends in or at the end of the relevant period.

(5) Section 24(2) shall not apply in relation to income which is deemed to accrue to a person for any period by virtue of this section.

(6) Any income which is deemed to accrue to a person for any period by virtue of this section-

(a) shall not be reduced by reference to any other amount under any provision of this Ordinance; and

(b) shall not be used to reduce any other amount under any provision of this Ordinance,

and, except where the context otherwise requires, any reference to a loss in any provision of this Ordinance not contained in this Chapter does not include an allowable loss.

(7) Any reference in Part VIII to income shall include a reference to capital gains, whether such gains are taxable as income or as capital, and references to tax on income shall be construed accordingly.

144 Disposals and acquisitions treated as made at market value

(1) Subject to the provisions of this Ordinance, a person's acquisition or disposal of an asset shall for the purposes of this Ordinance be deemed to be for a consideration equal to the market value of the asset-

(a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length; or

(b) where he acquires or, as the case may be, disposes of the asset wholly or partly for a consideration that cannot be valued, or for consideration which is past.

(2) In this Chapter "market value" in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market, and where the assets concerned are unquoted shares, subsection (3) below shall apply.

(3) Where this subsection applies, it shall be assumed that, in the open market which is postulated for the purposes of determining the market value of the shares in question, there is available to any prospective purchaser of those shares all the information which a prudent prospective purchaser of the shares might reasonably require if he were proposing to purchase them from a willing vendor by private treaty and at arm's length.

(4) Subsection (1) shall not apply to the acquisition of an asset if-

(a) there is no corresponding disposal of it; and

(b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset.

145 Licences exchanged for other licences or work obligation

(1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal of a petroleum licence made by way of a bargain at arm's length.

(2) To the extent that the consideration for the disposal consists of another petroleum licence or an interest in another petroleum licence or an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the petroleum licence disposed of, the value of that consideration shall be treated as nil for the purposes of this Ordinance.

[S. 10(2)(a), (b) and (c)/Ord. 6/15/w.e.f. 1/10/15, subject to the provision in section 10(5) that section 10 of Ordinance 6 of 2015 shall be treated as always having had effect.]

(3) If the disposal of a petroleum licence is part of a larger transaction under which one party makes to another disposals of two or more petroleum licences, the reference in subsection (2) above to the licensed area in relation to the petroleum licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those two or more petroleum licences.

[S. 10(3)(a), (b), (c) and (d)/Ord. 6/15/w.e.f. 1/10/15, subject to the provision in section 10(5) that section 10 of Ordinance 6 of 2015 shall be treated as always having had effect.]

(4) In relation to a disposal of a petroleum licence-

(a) which is a part disposal of the petroleum licence in question; and

[S. 10(4)(b)/Ord. 6/15/w.e.f. 1/10/15, subject to the provision in section 10(5) that section 10 of Ordinance 6 of 2015 shall be treated as always having had effect.]

(b) part of the consideration for which does not fall within subsection (2) above,

paragraph 3 of Schedule 2 shall not apply unless the amount or value of the part of the consideration which does not fall within subsection (2) is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the petroleum licence rather than a part disposal, would be deductible in the computation of the gain under paragraph 1(2) of Schedule 2.

(5) Where paragraph 3 of that Schedule has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, in sub-paragraph (5) of that paragraph, for all the words following paragraph (a) there were substituted-

"(b) the aggregate referred to in section 145(4) on the other hand (call that aggregate C),

and the fraction of those sums allowable as a deduction in computing the amount of the gain (if any) accruing on the disposal shall be-

$$\frac{A}{C}$$

and the remainder shall be attributed to the part of the property which remains undisposed of."

146 Time of disposal and acquisition where asset disposed of under contract

(1) Subject to paragraph 8 of Schedule 2, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

147 Supplementary provisions

(1) Any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government or any public or local authority whether in the Falkland Islands, the United Kingdom or elsewhere shall be excluded from the computation of a gain.

(2) A deduction shall not be allowable in a computation of the gain more than once from any sum or from more than one sum.

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

(4) For the purposes of any computation of the gain, any necessary apportionments shall be made on a just and reasonable basis.

(5) Schedule 2 which contains further provisions relating to the charge to tax in respect of capital gains, shall have effect.

148 Disposals and acquisitions by members of groups

(1) Where a disposal of exploration or exploitation rights or of unquoted shares is made (not being a deemed disposal) by a company which is member of a group to a company which at the time of the disposal is a member of the same group, then the rights or shares shall be taken to

have been disposed of, and acquired, for a consideration of such amount that neither a gain nor a loss occurs on the disposal.

(2) In any case where-

(a) a company has acquired any exploration or exploitation rights on a disposal within subsection (1) above; and

(b) at any time within six years of the date of that disposal the company ceases to be a member of the group concerned,

then the company shall be deemed to have disposed of those rights immediately before the time referred to in paragraph (b) above, and reacquired them, at their market value at the time of that deemed disposal.

(3) Where-

(a) a company is assessed to tax; and

(b) any amount of that tax is referable to chargeable gains which accrued at a time when the company was a member of a group; and

(c) any of the assessed tax is not paid when due,

then any relevant company may be assessed to tax in the name of the company referred to in paragraph (a) above for an amount equal to the unpaid tax (but not exceeding the amount of tax referred to in paragraph (b) above) within two years of the date when the unpaid tax was due.

(4) A relevant company which is assessed to tax under subsection (3) above and pays the tax (or any of it) shall be entitled to recover that amount from the company referred to in subsection (3)(a) or from any other relevant company, and a relevant company from which any amount is recovered under this subsection shall also be entitled to recover the amount from the company referred to in subsection (3)(a).

(5) In this section "relevant company", in relation to tax due on a disposal of an asset by a member of a group, means-

(a) a company which at the time of the disposal was a member of the group but which was not the subsidiary of any other member; and

(b) a company which at any time within the period of two years ending with the disposal, was a member of the group and the owner of the asset disposed of;

and in paragraphs (a) and (b) above the disposal referred to is the disposal referred to in subsection (1) above (even where the tax is due on a deemed disposal under subsection (2) above).

149 Recovery of unpaid tax in certain cases

(1) This section applies where-

(a) a chargeable gain has accrued on the disposal of an asset by a person (the tax-payer) who was not resident in the Falkland Islands at the time of the disposal;

(b) the gain or any part of it forms part of the tax-payer's income for tax purposes by virtue of section 143; and

(c) any of the tax assessed on the tax-payer in respect of income which includes the whole or part of the gain is not paid within thirty days from the time when it becomes payable.

(2) The Commissioner may, at any time before the end of the period of three years beginning with the time when the amount of tax referred to in subsection (1)(c) above is finally determined, serve on any person to whom subsection (4) below applies a notice-

(a) stating the amount remaining unpaid of that tax and the date when the tax became payable; and

(b) requiring that person to pay the relevant amount within 30 days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of-

(a) the amount which remains unpaid of the tax assessed on the tax-payer company for the accounting period in which the gain accrued; and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies-

(a) if the tax-payer is a company, to any person who is, or during that period was, a controlling director of the tax-payer or of a company which has, or within that period had, control over the tax-payer; and

(b) in addition to any such controlling director, if the chargeable gain in question accrued on the disposal by the tax-payer of unquoted shares which derived any of their value from exploration or exploitation rights, any person who owns the rights.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him, and interest on the amount shall be payable by that person accordingly; and he may recover any such amount paid by him from the tax-payer company.

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

(7) Where more than one person may be given a notice under this section in respect of the same amount of unpaid tax, the liability of such persons to pay the amount specified in the notice shall be joint and several

(8) In this section-

"director", in relation to a company, includes any person who-

(i) is a manager of the company or otherwise concerned in the management of the company's business; and

(ii) is either on his own or with one or more associates the beneficial owner of or able directly or through the medium of other companies or by any other indirect means, to control 20 per cent or more of the ordinary share capital of the company; and

"controlling director", in relation to a company, means a director of the company who has control of it (applying section 210 for the purposes of this definition).

For the purposes of paragraph (ii) above a person shall be treated as owning or controlling what his associates own or control, whether he owns or -controls any share capital or not.

CHAPTER III
RING FENCE TRADES

150 Ring-fencing of petroleum extraction activities, etc., for tax purposes

(1) Where a person carries on as part of a trade-

(a) any petroleum extraction activities; or

(b) any of the following activities, namely, the acquisition, enjoyment or exploitation of petroleum rights; or

(c) activities of both those descriptions,

those activities shall be treated for the purposes of this Ordinance as a separate trade, distinct from all other activities carried on by him as part of the trade.

(2) Unless the Commissioner gives a direction in writing that this subsection shall not apply in relation to any specified tariff receipt-

(a) a tariff receipt of a person carrying on a ring-fence trade shall, if it is not otherwise a receipt of that ring-fence trade, be deemed to be such a receipt; and

(b) the activities of a licensee or any person connected or associated with him, not otherwise being petroleum extraction activities, in providing assets in a way which gives rise to tariff receipts of the licensee, shall be deemed to be such activities.

A licensee is associated with another person if by acting together with another licensee he is able to secure or exercise control of that other person, and section 210 shall apply for the purposes of this subsection.

(3) For the purposes of subsection (2) above, a tariff receipt, in relation to a licensee, is the amount or value of any consideration in the nature of income for-

(a) the use of an asset which has been used or is expected to be used in his ring fence trade; or

(b) the provision of services or other business facilities of whatever kind (other than any loan or credit) in connection with the use of such an asset,

but does not include consideration for any asset or services or facilities used in connection with deballasting.

(4) An allowance under Chapter II of Part V shall not be made in respect of expenditure incurred for or in connection with a business which is a ring- fence trade except by way of deduction from ring-fence income.

(5) An allowance under Chapter II of Part V shall not be made in respect of expenditure incurred for or in connection with a business which is not a ring-fence trade by way of deduction from ring-fence income, and, accordingly, where a person's chargeable income includes ring-fence income, the amount of that person's chargeable income against which the allowance may be made shall be reduced by an amount equal to the amount of that ring-fence income.

(6) For the purposes of subsection (5) above the amount of a person's chargeable income and the amount of any ring-fence income shall be the amount of that income after all deductions, allowances and reliefs which may be made have been made (other than any which have not been claimed or have been disclaimed).

(7) Relief in respect of a loss which arises from a ring-fence trade shall not be given under Chapter III of Part V (loss relief) against any income except ring-fence income.

(8) Relief in respect of a loss which does not arise from a ring-fence trade shall not be given under Chapter III of Part V against ring-fence income.

(9) In any case where-

(a) in any chargeable period a person incurs a loss in activities ("separate activities") which, for that or any subsequent chargeable period, are treated by virtue of subsection (1) above as a separate trade for the purposes specified in that subsection; and

(b) in any subsequent chargeable period any of his trading income is derived from activities ("related activities") which are not part of the separate activities but which, apart from subsection (1) above, would together with those activities constitute a single trade,

then, notwithstanding anything in that subsection, the amount of the loss may be set off, in accordance with section 126 or 128, against so much of his trading income in any subsequent chargeable period as is derived from the related activities.

(10) On a claim for group relief made by a claimant company in relation to a surrendering company-

(a) group relief shall not be allowed against the claimant company's ring-fence income except to the extent that the claim relates to losses incurred by the surrendering company that arose from a ring- fence trade; and

(b) group relief shall not be allowed against the claimant company's income which is not ring-fence income to the extent that the claim relates to losses incurred by the surrendering company that arose from a ring-fence trade.

(11) A reference in this Act to a ring-fence trade includes a reference to anything undertaken by one person ("C") as a contractor for another person ("P") who carries on a ring-fence trade for the purposes of this Chapter, if and in so far as C's activities are undertaken for the purposes of P's ring-fence trade.

[S. 11(1)/Ord. 6/15/w.e.f. 1/10/15.]

151 Non-arm's length disposals and appropriations: valuation of petroleum

(1) Where a person carrying on a ring-fence trade disposes otherwise than by an arm's length sale of any petroleum in the course of that trade, then, for all purposes of this Ordinance, he shall be deemed to have disposed of the petroleum, at the time of the disposal, for a consideration equal to the market value of the petroleum.

(2) Where a person carrying on a ring-fence trade makes a relevant appropriation of any petroleum in the course of that trade, then, for all purposes of this Ordinance, he shall be deemed-

(a) to have disposed of the petroleum in the course of his ring-fence trade; and

(b) to have acquired the petroleum in the course of his trade other than the ring-fence trade,

for a consideration equal to the market value of the petroleum at the time of the appropriation.

(3) For the purposes of subsections (1) and (2) above-

(a) the market value of any petroleum sshall be determined in accordance with section 151A; and

[S. 3(1)/Ord. 6/15/w.e.f. 1/10/15.]

(b) a sale is at arm's length if but only if-

(i) the contract price is the only consideration for the sale; and

(ii) the terms of the sale are not affected by any commercial relationship (other than that created by the contract itself) between the seller or any person connected with the seller and the buyer or any person connected with the buyer; and

(iii) neither the seller nor any person connected with him has, directly or indirectly, any interest in the subsequent resale or disposal of the petroleum or any product derived therefrom.

151A Determination of petroleum market value

(1) This section has effect for the determination of the market value of petroleum for the purposes of section 151.

(2) There shall be a Petroleum Pricing Panel; and-

(a) the Financial Secretary, or an individual nominated by the Financial Secretary, shall chair the Panel,

(b) the Director of Mineral Resources, or an individual nominated by the Director of Mineral Resources, shall also be a member of the Panel, and

(c) other members shall be appointed by, and on terms and conditions determined by, the Governor in Council.

(3) The Panel shall from time to time publish in the Gazette a price (the "norm price") to be used as the market value of petroleum; and-

(a) the Panel shall specify the class of transactions in respect of which each norm price is to have effect,

(b) a class of transactions may be described by reference to dates or any other factor or combination of factors, and

(c) a class of transactions may be described in such a way that the norm price applies wholly or partly retrospectively.

(4) Before publishing a norm price the Panel must consult persons appearing to them to represent the petroleum industry.

(5) The Governor in Council having consulted the Panel must publish arrangements for an appeal to be brought against the specification of a norm price; and the arrangements-

(a) must specify to whom an appeal may be brought (which may be a court, tribunal, administrative person or a specified judicial, political or administrative officer),

(b) must specify the period within which an appeal must be brought,

(c) may include other procedural provision (including provision about costs),

(d) may specify criteria to be considered in determining the appeal, and

(e) must include arrangements to be followed in the event of a successful appeal.

[S. 3(2)/Ord. 6/15/w.e.f. 1/10/15.]

152 Payments of interest

(1) Interest paid by a company shall not be allowable under section 97 as a deduction against the company's ring-fence income except to the extent permitted by subsection (2) below, but subject to subsections (3), (4) and (5) below and section 155

(2) Interest may be deducted under this subsection if and to the extent that it is payable in respect of money borrowed by the company which is shown to have been used to meet expenditure incurred by the company in its ring-fence trade or to have been appropriated to meeting expenditure to be so incurred by the company.

(3) Where it appears to the Commissioner that interest within subsection (2) above is paid at a time when the loan has not been reduced to the extent to which it is reasonable, having regard to all the circumstances including the original terms of the loan and the level of profitability of the ring-fence trade, to expect it to have been reduced, he may direct that all or any of that interest shall not be allowable as a deduction under section 97 against the company's ring-fence income.

(4) Interest paid by a company in respect of money borrowed to meet expenditure incurred or to be incurred in acquiring petroleum rights from a connected person shall not be allowable under section 97.

(5) Interest paid by a company shall not be allowable under section 97 as a deduction against income which is not ring-fence income except to the extent that it was payable in respect of money borrowed by the company which is shown to have been used to meet expenditure incurred by the company otherwise than in its ring-fence trade or to have been appropriated to meeting expenditure to be so incurred by the company.

(6) In the case of a contractor within the meaning of section 150(11), interest is allowable as a deduction in accordance with this section only in so far as attributable (through just and reasonable apportionment if necessary) to assets used in the Falkland Islands.

[S. 11(2)/Ord. 6/15/w.e.f. 1/10/15 and S. 7/Ord. 17/2019/w.e.f. 1/1/2019.]

152A …

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152B. Circumstances in which restriction on hire of relevant assets under section 152C applies

(1) Section 152C applies to a company which carries on a ring fence trade if —

(a) the company makes or is to make one or more payments under a lease of a relevant asset, or part of a relevant asset, for the purposes of its ring fence trade; and

(b) any of the following applies —

(i) the lessor is an associated person of a contractor;

(ii) the lessor is a person who is connected with the company, or was connected with the company when the lease was imposed;

(iii) the Commissioner notifies the company that the Commissioner considers that the lease is made in connection with arrangements with a main purpose of securing a tax advantage.

(2) For the purposes of subsection (1), a person is a contractor if the person carries out any of the following activities for the company —

(a) exploration or exploitation activities in, or in connection with, providing, operating or using a relevant asset in a relevant offshore service;

(b) any other activity in, or in connection with, providing a relevant offshore service.

(3) For the purposes of subsection (1)(b)(i), a person is an associated person of a contractor if the person —

(a) is or has been connected with the contractor;

(b) acts, has acted or is to act together with the contractor to provide a service; or

(c) is connected with a person specified in paragraph (a) or (b).

(4) For the purposes of subsection (3), a person does not act together with a contractor to provide a service to a person by reason only of leasing an asset that is provided, operated or used in the service.

(5) For the purposes of this section, a person who is a trustee or agent of another person, acts in a conduit arrangement with another person or acts directly or indirectly for and on behalf of another person in any other way is to be treated as if the person were connected with the other person.

(6) In this section —

"**conduit arrangement**" means an arrangement under which a person receives, directly or indirectly, a payment in respect of a relevant asset used in connection with a ring fence trade and pays, directly or indirectly, the whole or a part of the payment to another person;

"**exploration or exploitation activities**" does not include petroleum extraction activities or activities consisting of the acquisition, enjoyment or exploitation of petroleum rights;

"**provide a relevant offshore service**" means provide, operate or use a relevant asset in, or in connection with, carrying on exploration or exploitation activities in controlled waters;

"**relevant asset**" has the meaning given to it in section 152E;

"**tax advantage**" means —

(a) a relief from tax or increased relief from tax;

(b) a repayment of tax or increased repayment of tax;

(c) the avoidance or reduction of a charge to tax or an assessment to tax; or

(d) the avoidance of a possible assessment to tax.

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152C. Restriction on hire of relevant assets

(1) The total amount that may be brought into account in respect of the payments for the purposes of calculating the company's ring fence income in an accounting period is limited to the hire cap.

(2) The "**hire cap**" is an amount equal to the relevant percentage of TC for the accounting period, subject to subsection (3).

(3) If payments in relation to which subsection (1) applies are also made, or to be made, by one or more other companies in respect of a relevant asset or part of a relevant asset, the "**hire cap**" is to be such proportion of the amount mentioned in subsection (2) as is just and reasonable, having regard (in particular) to the amounts of the payments made, or to be made, by each company.

(4) In subsection (2), subject to subsection (6), "**relevant percentage**" means —

URFT/TD x PRA, where —

URFT is the number of days in the accounting period that the relevant asset is provided, operated or used for the purposes of the company's ring fence trade;

TD is the number of days in the accounting period; and
PRA is the percentage appropriate for the relevant asset pursuant to section 152D.

(5) Accordingly, the relevant percentage is zero if the relevant asset is not provided, operated or used in the accounting period.

(6) If the accounting period is less than 12 months, the relevant percentage is to be proportionally reduced.

(7) In subsection (2), TC is OC + CE.

(8) Unless subsection (10) applies, and subject to subsections (11) and (12), OC is the sum of —

(a) any consideration given for the acquisition of the relevant asset or part when it was first acquired by an lessor associated person; and

(b) any expenses incurred by a lessor associated person in connection with that acquisition (other than the costs of financing the acquisition).

(9) Subsection (10) applies if the relevant asset or part —

(a) is leased by a lessor associated person from a person who is not a lessor associated person; and

(b) has never been owned by a lessor associated person.

(10) Subject to subsections (11) and (12), OC is the sum of —

(a) the consideration that is reasonable to suppose would have been given for the acquisition of the relevant asset or part, if it had been acquired by a lessor associated person by way of a bargain at arm's length at the time it was first leased as mentioned in subsection (9)(a); and

(b) the expenses (other than the costs of financing the acquisition) that it is reasonable to suppose would have been incurred by a lessor associated person in connection with such an acquisition.

(11) If the relevant asset or part was first acquired by a lessor associated person, or (as the case may be) first leased as mentioned in subsection (9)(a), before the beginning of the accounting period, OC does not include any part of the consideration mentioned in subsection (8)(a) or (as the case may be) (10)(a) that it is reasonable to attribute to anything that no longer forms part of the relevant asset or part at the beginning of the accounting period.

(12) If the relevant asset or part was first acquired by a lessor associated person, or (as the case may be) first leased as mentioned in subsection (9)(a), in the accounting period, OC for the accounting period is —

OC x ((D-DBA)/D), where —

D is the total number of days in the accounting period;

DBA is the number of days in the accounting period before the day on which the relevant asset or part was first acquired or first leased; and

OC is the amount given by subsection (8) or (as the case may be) (10).

(13) Subject to subsections (14) and (15), CE is capital expenditure on the relevant asset or part (other than capital expenditure in respect of its acquisition or the acquisition of a lease of it) incurred by a lessor associated person —

(a) after it was first acquired by a lessor associated person or (as the case may be) was first leased as mentioned in subsection (10)(a); and

(b) before the end of the accounting period.

(14) CE does not include any capital expenditure mentioned in subsection (13) that is —

(a) incurred before the beginning of the accounting period; and

(b) not reflected in the state or nature of the relevant asset or part at the beginning of the accounting period.

(15) If any capital expenditure mentioned in subsection (13) is incurred on a day in the accounting period, the amount of CE for the accounting period in respect of that capital expenditure is —

CEA x ((D-DBI)/D), where —

D is the total number of days in the accounting period;

DBI is the number of days in the accounting period before the day on which that capital expenditure is incurred; and

CEA is the amount of that capital expenditure.

(16) For the purposes of this section —

(a) a lease is (in relation to an asset) an agreement or arrangement under which payments are made for the use of or otherwise in respect of the asset;

(b) a lease includes an agreement or arrangement under which the payments (or any of them) represent instalments of a purchase price or payments towards it; and

(c) notwithstanding paragraphs (a) and (b), an agreement or arrangement to which section 106B(2) applies shall not be treated as a lease unless the Commissioner gives a notification under section 152B(1)(b)(iii).

(17) In this section —

"**relevant asset**" has the meaning given to it in section 152E;

"**lessor**" means lessor under a lease referred to in this section;

"**lessor associated person**" means —

(a) the lessor;

(b) a person who is or has been connected with the lessor; or

(c) a person who is connected with a person referred to in paragraph (b), or acting together with the lessor or a person referred to in paragraph (b) in relation to the lease of a relevant asset.

[UK Corporation Tax Act 2010 s.285A(2)-(4), s. 356N(2)-(15), s.868(2),(3)]

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152D. Hire cap percentages for relevant assets

(1) Subject to subsection (2), the percentage appropriate for a relevant asset is 7.5%.

(2) If the Commissioner is satisfied that increasing the percentage appropriate for a relevant asset to a percentage more than 7.5% would be just and reasonable having regard to the economic characteristics of a relevant asset, the Commissioner may, by notice in writing to the company making payments under the lease of the relevant asset, increase the percentage appropriate for the relevant asset.

(3) In subsection (2), reference to the Commissioner having regard to the economic characteristics of a relevant asset includes reference to the Commissioner having regard to the useful life of the relevant asset when it was first constructed.

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152E. Meaning of relevant asset

(1) Subject to subsections (4) and (5), in sections 152B, 152C and 152D, "**relevant asset**" means an asset which is of the requisite value.

(2) A reference to an asset in subsection (1) is a reference to an asset (including a ship or other vessel) that —

(a) can be moved from place to place (whether or not under its own power) without major dismantling or modification;

(b) can be used in connection with a ring fence trade; and

(c) is or will be provided, operated or used in controlled waters for 30 days or more in aggregate within a continuous 12 month period.

(3) An asset is of the requisite value if its market value is £2,000,000 or more.

(4) The Governor may, by rules, modify the meaning of relevant asset and requisite value.

(5) Rules made under subsection (4) may —

(a) amend this section;

(b) make different provision for different cases or different purposes; and

(c) make incidental, consequential, supplementary, transitional or saving provisions.

[UK Corporation Tax Act 2010 s.356LA(2)(a), (7)-(9), s.356N(1), s.356NA(2)]

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152F. Hire of relevant assets: anti-avoidance

(1) If a person enters into an arrangement the main purpose or one of the main purposes of which is to secure that section 152C(1) does not apply in relation to one or more payments to any extent, that subsection applies in relation to the payments to the extent that it would not otherwise do so.

(2) In subsection (1), "**arrangement**" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

[UK Corporation Tax Act 2010, s.285A(8), (9)]

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

152G. Hire of relevant assets: administration

(1) A company which leases a relevant asset must include as part of the company's return and accounts the company delivers to the Commissioner under section 30 —

(a) an explanation of whether section 152C applies to the lease; and

(b) if section 152C applies to the lease —

(i) a calculation of the amount of the restrictions applying under that section (which must be based on the company's determination of the value of TC, as defined in section 152C(7)); and

(ii) supporting evidence for the calculation of the amount of the restrictions applying and the basis of any estimates used in doing so.

(2) For the purpose of assessing a company's compliance with section 152C, the Commissioner may, by notice in writing, request the company to provide to the Commissioner the information and copies of the documents the Commissioner specifies in the notice.

(3) A company must comply with a request made to it under subsection (2) as soon as practicable after receiving the request.

(4) The information or copies of documents which the Commissioner may request the company to provide under subsection (2) include the following —

(a) leases of relevant assets;

(b) contractor services it has received;

(c) counterparties to the leases of relevant assets and contractor services received;

(d) commercial and tax purposes for entering into leases of relevant assets.

(5) If a company does not provide the return, accounts, information or copies of documents referred to in subsection (1) or (2), or if the return, accounts, information or copy omits information, contains incomplete or incorrect information or a miscalculation relating to ring fence income or compliance with section 152C, the Commissioner may amend the return, or an assessment relating to the return, to the extent necessary to rectify the omission, incomplete or incorrect information, miscalculation or failure.

(6) If the Commissioner amends a return or assessment under subsection (5), the Commissioner must give written notice to the company of the amendment.

[S. 8/Ord. 12/19/w.e.f. 1/10/15.]

153 Restriction on setting ACT against income from petroleum extraction activities, etc.

(1) Sections 37, 40 and 128 shall have effect subject to the following provisions of this section.

(2) Subsection (3) below applies where ACT is paid by a company ("the distributing company")-

(a) in respect of any distribution made by it to a company associated with it and resident in the Falkland Islands ("the receiving company"); or

(b) in respect of any distribution which, in accordance with subsection (4) below, is made pursuant to a substitution scheme; or

(c) where subsection (5) below applies, in respect of any distribution consisting of a dividend on a redeemable preference share.

(3) Where this subsection applies-

(a) the ACT shall not be set against the distributing company's liability to corporation tax on any ring-fence profits of the distributing company; and

(b) if the benefit of any amount of that ACT is surrendered under section 38 to a subsidiary of the distributing company, the corresponding amount of ACT which under that section the subsidiary is treated for the purposes of section 37 as having paid shall not be set against the subsidiary's liability to corporation tax on any ring-fence income of the subsidiary; and

(c) if the receiving company carries on a ring-fence trade, it may not make a claim under section 128(1) to set losses incurred in its ring- fence trade against any of its surplus franked investment income by virtue of a claim under section 40, in so far as that surplus includes any amount referable to the distribution.

(4) For the purposes of subsection (2) above, a distribution ("the relevant distribution") is made pursuant to a substitution scheme if-

(a) it is made in respect of shares or securities issued or transferred pursuant to or otherwise for the purposes of a scheme or arrangements; and

(b) by virtue of the scheme or arrangements a person's entitlement to, or to any rights in, the relevant distribution arises, directly or indirectly, by way of substitution for or addition to any entitlement of his to, or any prospect of his of, a distribution in respect of shares in or securities of another company; and

(c) at the time of the relevant distribution, that other company is associated with the distributing company and is resident in the Falkland Islands.

(5) Subject to subsection (6) below, this subsection applies in relation to the payment of a dividend on redeemable preference shares if-

(a) at the time the shares are issued, or

(b) at the time the dividend is paid,

the company paying the dividend is under the control of a company resident in the Falkland Islands, and section 210 shall apply for the purposes of this subsection.

(6) Subsection (5) above does not apply if or to the extent that it is shown that the proceeds of the issue of the redeemable preference shares-

(a) were used to meet expenditure incurred by the company issuing them in carrying on petroleum extraction activities or in acquiring petroleum rights otherwise than from a connected person; or

(b) were appropriated to meeting expenditure to be so incurred by that company.

(7) For the purposes of this section, shares in a company are redeemable preference shares either if they are so described in the terms of their issue or if, however they are described, they fulfill the condition in paragraph (a) below and either or both of the conditions in paragraphs (b) and (c) below-

(a) that, as against other shares in the company, they carry a preferential entitlement to a dividend or to any assets in a winding up or both; and

(b) that, by virtue of the terms of their issue, the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part; or

(c) that, by virtue of any material arrangements, the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them.

(8) For the purposes of subsection (7)(a) above, shares are to be treated as carrying a preferential entitlement to a dividend as against other shares if, by virtue of any arrangements, there are circumstances in which a minimum dividend will be payable on those shares but not on others.

(9) For the purposes of subsection (7)(c) arrangements relating to shares are material arrangements if the company which issued the shares or a company associated with that company is a party to the arrangements.

CHAPTER IV
MISCELLANEOUS COSTS AND EXPENSES

*[S. 8/Ord. 17/2019/w.e.f. 1/1/2019.]***154 Certain expenses not deductible**

(1) In any case where-

(a) expenditure is incurred by a person, at a time when he is a licensee or is connected with a licensee, in making payments (in money or money's worth) to another person ("the recipient"); and

(b) the amount or value of the payments is wholly or partly dependent on or determined by reference to the quantity, value or proceeds of, or the profits from, petroleum won in pursuance of the licence,

that expenditure shall not be deductible in computing the chargeable income of that person, but an amount equal to the payments shall be deducted from the chargeable income of the recipient for the chargeable period in which they are made.

(2) Section 210 shall apply for the purposes of this section.

155 Finance costs: deductibility

[S. 5(1)/Ord. 6/15/w.e.f. 1/10/15.]

(1) Any payment of interest by a company to which this section applies in respect of securities issued by the company-

(a) where the securities are held by a company which owns (directly or indirectly) not less than 75 per cent of the ordinary share capital of the issuing company; or

(b) another company owns (directly or indirectly) not less than 75 per cent of the ordinary share capital of both companies,

shall not be deductible in ascertaining the chargeable income of the company unless and to the extent that the Commissioner directs the company that the payment may be deducted.

(2) Subsection (2A) applies where-

(a) finance charges are incurred by a company to which this section applies ("C") in respect of a financial transaction, and

(b)one of the following applies —

(i) C has a special relationship with one or more of the parties to the transaction ("SR");

(ii) it appears to the Commissioner that the financial transaction has a main purpose of securing a tax advantage.

[S. 5(2)/Ord. 6/15/w.e.f. 1/10/15 and S. 9(1)/Ord. 17/2019/w.e.f. 1/1/2019.]

(2A) The finance charges shall not be deductible in ascertaining C's chargeable income, unless and to the extent that the Commissioner directs that the charges may be deducted.

[S. 5(2)/Ord. 6/15/w.e.f. 1/10/15.]

(2B) ...

[S. 5(2)/Ord. 6/15/w.e.f. 1/10/15.and S. 9(2)/Ord. 17/2019/w.e.f. 1/1/2019.]

(2C) If this section applies to a person who is referred to in section 150(11) as a contractor for a person who carries on a ring-fence trade, finance charges are deductible in accordance with this section only in so far as attributable (through just and reasonable apportionment if necessary) to assets used in the Falkland Islands.

[S. 5(2)/Ord. 6/15/w.e.f. 1/10/15.and S. 9(3)/Ord. 17/2019/w.e.f. 1/1/2019.]

(3) To the extent a payment falls within subsection (1) or (2) and also within section 104, 152(3) or 152C, subsection (1) or (2) (as the case may be) shall apply to the exclusion of section 104, 152(3) or 152C.

[S. 5(3)/Ord. 6/15/w.e.f. 1/10/15.and S. 9(4)/Ord. 17/2019/w.e.f. 1/1/2019.]

(4) If C enters into a financial transaction under which the finance charges may exceed £50,000 in an accounting period, and to which subsection (2A) applies or may apply, C must, in writing, notify the Commissioner that C has entered into the financial transaction no later than 20 business days after doing so.

[S. 5(4)/Ord. 6/15/w.e.f. 1/10/15.and S. 9(5)/Ord. 17/2019/w.e.f. 1/1/2019.]

(5) ...

[S. 5(5)/Ord. 6/15/w.e.f. 1/10/15.]

(6) This section applies to a company carrying on a ring-fence trade.

[S. 5(6)/Ord. 6/15/w.e.f. 1/10/15 and S. 9(6)/Ord. 17/2019/w.e.f. 1/1/2019.]

(7) In this section —

"**finance charge**" has the same meaning as in the definition of "finance charge" in section 155A but without the exclusion of the matters referred to in paragraph (c) of that definition;

"**financial transaction**" means a transaction under which a finance charge is to be or may be incurred;

"**securities**" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;

"**special relationship**" means a relationship as a result of which C and SR are not dealing, or may not be dealing, at arm's length.

(7A) A direction given by the Commissioner under subsection (2A) may be —

(a) specific;

(b) general;

(c) conditional; or

(d) absolute.

(7B) The Commissioner may publish guidance on the criteria that the Commissioner must consider in determining whether or not to give a direction under subsection (2A).

[S. 9(7)/Ord. 17/2019/w.e.f. 1/1/2019.]

(8) ...

[S. 5(7)/Ord. 6/15/w.e.f. 1/10/15.]

155A. Finance charges restriction: interpretation

In this section and sections 155B to 155F —

"**de minimis allowance**" has the meaning it has in section 155D;

"**finance charges**" —

(a) means any of the following —

(i) interest expenses on debt;

(ii) costs economically equivalent to interest;

(iii) expenses and losses incurred in connection with raising finance;

(b) includes the following —

(i) payments under profit participating loans;

(ii) imputed interest on instruments such as convertible bonds and zero coupon bonds;

(iii) alternative finance returns payable under alternative financing arrangements, such as Islamic finance;

(iv) the finance cost element of finance lease payments or other arrangements accounted for as a financial liability;

(v) capitalised interest;

(vi) amounts measured by reference to a funding return under transfer pricing rules where applicable;

(vii) notional interest amounts under derivative instruments or hedging arrangements related to an entity's borrowings;

(viii) guarantee fees for financing arrangements, arrangement fees and similar costs related to the borrowing of funds;

(ix) fees for letters of credit or other financial guarantees in respect of decommissioning liabilities;

(x) gains and losses from derivatives which hedge risks associated with the company's finance; and

(c) does not include the following —

(i) foreign exchange gains and losses;

(ii) impairment losses and their reversal;

(iii) gains and losses from derivatives which hedge risks arising in the ordinary course of a trade where the contract was entered into wholly for reasons unrelated to the capital structure of the company or its group;

"**finance charges restriction**" means the rules on restriction and reactivation of finance charges specified in sections 155C to 155F;

"**finance charges restriction return**" has the meaning it has in section 155E;

"**net finance charges**" means, in relation a company's accounting period, the higher of the following amounts —

(a) the amount of the company's finance charges that would be deductible before application of the finance charges restriction less the amount of the company's taxable income earned from finance charges;

(b) zero;

"**net finance charges allowance**" has the meaning it has in section 155C(2);

"**tax-EBITDA**" means, in relation to a company's accounting period, the chargeable income (if any) of the company for the accounting period after excluding —

(a) capital gains and allowable losses under Part VI, Chapter II;

(b) deductions for finance charges and any taxable income from finance charges;

(c) depreciation allowances or charges under Part V, Chapter II;

(d) loss relief under Part V, Chapter III; and

(e) group relief under Part V, Chapter IV.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155B. Commissioner has power to publish guidance and give directions

(1) The Commissioner may publish guidance, or give directions, for the purpose of ensuring that the finance charges restriction operates on a just and reasonable basis.

(2) Notwithstanding the definitions of "finance charges" and "tax-EBITDA" in section 155A, the Commissioner may exercise the power under subsection (1) to publish guidance or give directions about whether particular classes of amounts are, or are not, finance charges or tax-EBITDA.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155C. Finance charges restriction

(1) This section —

(a) applies to a company carrying on a ring-fence trade; and

(b) provides for —

(i) disallowing certain amounts that a company would, apart from this section, be entitled to bring into account for the purposes of corporation tax in respect of finance charges; and

(ii) allowing certain amounts disallowed under this section in previous accounting periods to be brought into account in later accounting periods.

(2) The net finance charges allowance, in respect of a company's accounting period, is the higher of the following —

(a) 30% of the company's tax-EBITDA;

(b) the company's de minimis allowance.

(3) A company is subject to a disallowance under this section if, in an accounting period, the company's net finance charges before application of the finance charges restriction exceed the company's net finance charges allowance.

(4) The disallowance applies to a company's finance charges that would be deductible before application of the finance charges restriction in an amount equal to the excess referred to in subsection (3).

(5) An amount previously disallowed under subsections (3) and (4) may be subsequently reactivated and brought into account by a company as a deduction in an accounting period that ends within 5 years after the end of the accounting period referred to in subsection (3), if and to the extent that —

(a) in the subsequent accounting period the company's net finance charges are less than 30% of the company's tax-EBITDA; and

(b) the amount previously disallowed has not previously been reactivated.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155D. Finance charges restriction: de minimis allowance

(1) There is a de minimis allowance.

(2) The maximum value of a de minimis allowance that may be allocated for a company's accounting period is —

(a) £500,000; or

(b) if a company's accounting period is less than 12 months, £500,000 reduced pro rata.

(3) To the extent that the de minimis allowance is allocated for a company's accounting period, the de minimis allowance of the company is not available for any other company that is, at any time in an accounting period, connected to the first company.

(4) For connected companies, the following applies —

(a) the companies must agree how the maximum de minimis allowance of £500,000 is to be allocated between them and each company must specify how the allowance is allocated between the companies in its finance charges restriction return;

(b) if the accounting periods of the connected companies begin or end on different days, each company must adjust its allocation of the allowance agreed to under paragraph (a) as is just and reasonable.

(5) The Commissioner may, by notice, direct what the value of the de minimis allowance is for a company (which may be nil) if —

(a) the company has been allocated a de minimis allowance that exceeds the maximum value specified in subsection (2);

(b) the allocation of the de minimis allowance for the company or companies connected to the company is not clearly indicated on the company's finance charges restriction return;

(c) the company and companies connected to the company appear not to have been able to agree how to allocate the de minimis allowance between them; or

(d) the accounting periods of the company and companies connected to the company begin or end on different days and the company or a company connected to the company has not adjusted its allocation of the de minimus allowance agreed between the connected companies as is just and reasonable.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155E Finance charges restriction: administration

(1) This section does not apply to a company that —

(a) does not have net finance charges greater than £500,000 in an accounting period relevant to the corporation tax year; and

(b) is not connected with another company within the charge to corporation tax in an accounting period relevant to a corporation tax year.

(2) A company that is within the charge to corporation tax must deliver to the Commissioner a finance charges restriction return for each corporation tax year.

(3) The finance charges restriction return —

(a) must be in the form prescribed by the Commissioner;

(b) forms part of the company's return the company delivers to the Commissioner under section 30 for the corporation tax year the finance charges restriction form relates to; and

(c) must contain the following information —

(i) whether and to what extent an amount of de minimis allowance has been allocated to the company for an accounting period;

(ii) details of any companies connected with the company that are within the charge to corporation tax, and the extent to which those companies have been allocated an amount of de minimis allowance;

(iii) for each of the company's accounting periods that is relevant to the corporation tax year, calculation of the following for the company —

(A) tax-EBITDA;

(B) finance charges that would be deductible before application of the finance charges restriction;

(C) company's taxable income from finance charges;

(D) net finance charges;

(E) net finance charges allowance;

(F) finance charges disallowed or reactivated under section 155C; and

(G) amounts disallowed under section 155C for previous accounting periods and not yet reactivated.

(4) The Commissioner may, by notice, request a company to provide to the Commissioner information or copies of documents for assessing the compliance of the company and companies connected with the company with the finance charges restriction. The company must comply with the request as soon as practicable after receiving the request.

(5) The information or documents the Commissioner may request under subsection (4) include details of —

(a) the company's financing and hedging arrangements;

(b) counterparties to the financing and hedging arrangements; and

(c) the commercial and tax purposes for entering into the financing or hedging arrangements.

(6) The Commissioner may amend a company's return delivered under section 30 to the extent the Commissioner considers necessary if —

(a) the company's finance charges restriction return omits information or contains incomplete or incorrect information or a miscalculation relating to the finance charges restriction; or

(b) the company fails to provide information or documents requested by the Commissioner under subsection (4).

(7) If the Commissioner amends a company's return under subsection (6), the Commissioner must give written notice to the company of the amendment.

(8) If a company fails to deliver a finance charges restriction return to the Commissioner, section 33 applies as if the reference in that section to a company's accounts for an accounting period were a reference to the company's finance charges restriction return.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155F Finance charges restriction: anti-avoidance

(1) In this section —

"**tax advantage**" includes —

(a) additional finance charges being brought into account;

(b) a reduction in amounts disallowed under section 155C,

(c) additional amounts being reactivated under section 155C;

(d) a company or a connected company obtaining a greater de minimis allowance; and

(e) amounts that are taken into account for the purposes of corporation tax in respect of finance charges earlier or later than they would otherwise be taken into account.

(2) If the Commissioner is satisfied on reasonable grounds that arrangements exist that have as their main purpose, or one of their main purposes, to obtain a tax advantage for or in relation to a company or connected companies, the Commissioner may make the adjustments, as are just and reasonable, to reduce or negate the effect of those arrangements.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

155G Capitalised borrowing costs

(1) This section applies —

(a) subject to the provisions of this Ordinance that impose tax on or provide relief from taxation for an expense or income referred to in this section; and

(b) if the following apply —

(i) a company carries on a ring-fence trade;

(ii) generally accepted accounting practice allows a credit or debit in connection with the company's borrowing for an accounting period to be treated in the company's accounts as an amount brought into account for determining the value of a fixed capital asset or project.

(2) Despite the accounting practice referred to in subsection (1)(b)(ii), the credit or debit must be brought into account as an expense or income for the accounting period in which it is given in the same way as if it were a credit or debit which is brought into account in determining the company's profit or loss for that period in accordance with generally accepted accounting practice.

(3) If a debit is brought into account under subsection (2) —

(a) no expense may be brought into account in respect of the writing down of so much of the value of the asset or project as is attributable to that debit; and

(b) no expense may be brought into account in respect of so much of an amortisation or depreciation that represents a writing off of the interest component of the asset or project.

[S. 10/Ord. 17/2019/w.e.f. 1/1/2019.]

PART VII
TAX AVOIDANCE

156 Transfer pricing

Schedule 2A to this Ordinance shall have effect.

[S. 20(1)/Ord. 23/02/w.e.f. 1/1/03.]

157 . . .

[S. 18(a)/Ord. 23/03/w.e.f. 1/1/03.]

158 . . .

[S. 18(a)/Ord. 23/03/w.e.f. 1/1/03.]

159 . . .

[S. 18(a)/Ord. 23/03/w.e.f. 1/1/03.]

160 Restriction of relief for payments of interest

(1) Relief shall not be given to any person under any provision of this Ordinance in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.

(2) In this section "relief" means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

(3) Where the relief is claimed under Chapter IV of Part V (group relief) any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.

161 Transfer of property to evade taxation

Any person who reduces his income by the transfer or assignment of any real or personal, movable or immovable property to any member of his family shall nevertheless be liable to be taxed as if such transfer or assignment had not been made, unless the Commissioner is satisfied that such transfer or assignment was not made for the purpose of evading the whole or any part of any tax imposed under this Ordinance.

162 Tax payable before departure from Falkland Islands, etc.

(1) If the Commissioner has reason to believe that any person who has been assessed to tax may leave the Falkland Islands before the tax becomes payable without having paid such tax, he may by notice to that person demand payment of the tax within the period specified in the notice.

(2) Tax demanded by notice under subsection (1) shall be payable at the end of the specified period and, in default of payment and unless security for payment thereof be given to the satisfaction of the Commissioner, shall be recoverable forthwith in the manner prescribed by section 184(3).

(3) If the Commissioner has reason to believe that tax on any chargeable income may not be recovered, he may at any time and as the case may require-

(a) by notice require any person to make a return and to furnish particulars of any chargeable income within the specified period;

(b) make an assessment on that person in the amount of the income returned, or if default is made in making such return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable;

(c) by notice to the person assessed require security for the payment of the tax assessed to be given to his satisfaction.

(4) If the Commissioner has reason to believe that tax on any income which will become chargeable to such tax (assuming tax to be chargeable on that income), may not be recovered he may at any time-

(a) by notice to the person by whom the tax would be payable determine a period ("the tax period") for which tax shall be charged and require such person to render within the specified period returns and particulars of the income for the tax period;

(b) make an assessment upon the person in the amount of the income returned, or if default is made in making a return or the Commissioner is dissatisfied with such return, in such amount as the Commissioner may think reasonable,

and an assessment under this subsection shall be made at the rate of tax in force for the chargeable period in which the assessment is issued.

(5) Notice of any assessment made in accordance with the provisions of subsection (3) or (4) shall be given to the person assessed, and any tax so assessed (in accordance with the provisions of subsection (3) or (4)) shall be payable on demand made in writing under the hand of the Commissioner and shall in default of payment, unless security for the payment thereof be given to the satisfaction of the Commissioner, be recoverable forthwith in accordance with section 184(3).

(6) Any person who has paid the tax in accordance with a demand made by the Commissioner or who has given security for such payment under subsection (3) or (4) shall have the rights of objection and appeal conferred by sections 175 and 181 and the amount paid by him shall be adjusted in accordance with the result of any such objection or appeal.

(7) Subsections (3) or (4) are without prejudice to the powers of the Commissioner under section 173

(8) In this section "specified period", in relation to any notice, means such period as may be specified in the notice.

(9) This section applies in relation to assessments made before as well as after the coming into force of this section, and in relation to tax for chargeable periods beginning before the coming into force of this section.

163 Company migration

(1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the Falkland Islands.

(2) The requirements of this subsection are satisfied if the company gives to the Commissioner-

(a) notice of its intention to cease to be resident in the Falkland Islands specifying the time ("the relevant time") when it intends so to cease;

(b) a statement of the amount which, in its opinion, is the amount of tax which is or will be payable by it in respect of periods beginning before that time; and

(c) particulars of the arrangements which it proposes to make for securing the payment of that tax.

(3) The requirements of this subsection are satisfied if-

(a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and

(b) those arrangements as so made are approved by the Commissioner for the purposes of this subsection.

(4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Tribunal whose decision shall be final.

(5) If any information furnished by the company for the purpose of securing the approval of the Commissioner under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Commissioner under that subsection, any resulting approval of the Commissioner shall be void.

(6) In this section and section 164 any reference to the tax payable by a company includes a reference to-

(a) any amount which it is liable to pay under the POAT regulations made under section 91 or Schedule 6;

(b) …

[Sch. /Ord. 20/2022/w.e.f. 01/01/2023]

(7) In this section and section 164 any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.

(8) In this section and section 164 any reference to a provision of this Ordinance shall be construed, in relation to any time before the commencement of that provision, as a reference to the corresponding enactment repealed by this Ordinance.

164 Penalties for failure to comply with section 163

(1) If a company fails to comply with section 163 at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.

(2) If, in relation to a company ("the migrating company"), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 163 at any time and either-

(a) that person is a person to whom subsection (3) below applies; or

(b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that subsection applies,

that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.

(3) This subsection applies to the following persons, namely-

(a) any company which has control of the migrating company; and

(b) any person who is a director of the migrating company or of a company which has control of the migrating company.

(4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above-

(a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and

(b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 163 was to his knowledge such an act.

(5) References in this section to a company failing to comply with section 163 are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the Falkland Islands.

(6) In this section "director", in relation to a company, includes-

(a) any person managing, or who is a member of the body managing, the affairs of the company (by whatever name called);

(b) any person (other than a person advising in a professional capacity) in accordance with whose directions or instructions the other directors are accustomed to act; and

(c) any person who, or who together with any connected person, beneficially owns, directly or indirectly, at least 20 per cent of the ordinary share capital of the company.

PART VIII
DOUBLE TAXATION RELIEF

165 Double taxation relief arrangements

(1) If the Governor in Council by order declares-

(a) that arrangements specified in the order have been made with the Government of any territory outside the Falkland Islands with a view to affording relief from double taxation in relation to income tax or corporation tax or any tax of a similar character imposed by the laws of that territory; and

(b) that it is expedient that those arrangements should have effect,

the arrangements shall have effect in relation to income tax and corporation tax notwithstanding anything to the contrary in any enactment.

(2) Any order made under this section may be revoked by a subsequent order.

(3) The Governor in Council may make rules for carrying out the provisions of any arrangements having effect under this section.

166 Limit on credit: general provisions

(1) This section shall have effect where, under double taxation relief arrangements, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in the Falkland Islands.

(2) In subsections (3) to (7) below and sections 167 and 168-

"foreign tax" means any tax payable in that territory which under the arrangements is to be so allowed; and

"tax" means income tax or corporation tax chargeable under this Ordinance.

(3) A credit shall not be allowed against tax for any chargeable period unless the person entitled to the income is resident in the Falkland Islands for that period, but subject to that, the amount of tax chargeable in respect of the income shall, on a claim being made in that behalf, be reduced by the amount of the credit.

(4) In computing the amount of the income-

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the tax chargeable depends on the amount received in the Falkland Islands, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income;

(c) where the income includes a dividend and, under the arrangements, foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of credit;

but notwithstanding anything in paragraphs (a) to (c) above a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(5) Where-

(a) the double taxation relief arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls directly or indirectly, not less than one-half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(6) Any claim for an allowance by way of credit under this section for any chargeable period shall be made not later than two years after the end of that period, and in the event of any dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

(7) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the Falkland Islands or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made whether in the Falkland Islands or elsewhere, as are material in determining whether any and if so what credit falls to be given.

167 Limit on credit: income tax

(1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between-

(a) the amount of tax which would be chargeable (before allowance of any credit under this Part) on the total income of that person; and

(b) the amount of tax which would be so chargeable on the total income of that person less the income in respect of which the credit is to be allowed.

(2) Without prejudice to subsection (1), the total credit to be allowed to a person for any chargeable period for foreign tax under this Part shall not exceed the total tax payable by him for that period.

(3) Paragraphs (a) and (b) of section 166(4) (but not the remainder of that subsection) shall apply to the computation of total income for the purpose of subsection (1) above, and shall so apply in relation to all income in the case of which credit falls to be given for foreign tax under double taxation relief arrangements.

168 Limit on credit: corporation tax

(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income ("the relevant income") shall not exceed the corporation tax attributable to the relevant income, determined in accordance with subsection (2) below.

(2) The amount of corporation tax attributable to the relevant income shall be treated as equal to such proportion of the amount of that income as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income for the accounting period in which the income arises ("the relevant accounting period").

(3) Where in accordance with section 37 any ACT falls to be set against the company's liability to corporation tax on its income for the relevant accounting period-

(a) so far as that liability relates to the relevant income it shall be taken to be reduced by the amount of the credit for foreign tax attributable to that income as determined in accordance with subsection (2) above; and

(b) the amount of ACT which may be set against that liability, so far as it relates to the relevant income, shall not exceed the amount of corporation tax for which, after taking account of that reduction, the company is liable in respect of that amount of income.

169 Unilateral tax credit

(1) Where any person resident or ordinarily resident in the Falkland Islands proves that he had paid, by deduction or otherwise, overseas tax on any part of his income which arises from a source outside the Falkland Islands and which is also chargeable to Falkland Islands tax, he shall be entitled to a credit against such Falkland Islands tax equal to the overseas tax or the Falkland Islands tax on that part of his income whichever is the less.

(2) For the purposes of this section-

"income arising from a source outside the Falkland Islands" does not include, in the case of income from an employment, such part of that income as constitutes remuneration for services actually performed in the Falkland Islands; and

"overseas tax" means an income tax or corporation tax or tax of a similar character imposed by the laws of any territory outside the Falkland Islands other than a territory with the Government of which arrangements have been made which have effect under section 165

(3) For the purpose of calculating the amount of any credit under this section, the provisions of sections 166, 167 and 168 shall apply as if references in those sections to double taxation relief arrangements were references to this section and as if references to foreign tax were references to overseas tax.

170 Disclosure of information

(1) Where any arrangements have effect by virtue of section 165, the obligation as to secrecy imposed by section 202 shall not prevent the disclosure to any authorized officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(2) Without prejudice to subsection (1) above, where, under any law in force in any territory outside the Falkland Islands, provision is made for the allowance of relief from tax on income in respect of the payment of tax in the Falkland Islands, the obligation as to secrecy imposed by section 202 shall not prevent the disclosure to the authorized officers of the Government in that territory of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from tax on income in that -territory.

PART IX
ASSESSMENTS, APPEALS, COLLECTION, REPAYMENT OF TAX, OFFENCES AND PENALTIES

Assessments to income tax and corporation tax

171 Assessments to income tax

(1) The Commissioner shall assess every person chargeable to income tax for any year of assessment as soon as is reasonably practicable after the expiration of the time allowed to such person for the delivery of his return under section 12 that year.

(2) Where a person has delivered his return the Commissioner may-

(a) accept the return and make an assessment accordingly; or

(b) refuse to accept the return, and, to the best of his judgment, determine the amount of the chargeable income of that person and assess him accordingly.

(3) Where a person has not delivered a return for any year within the time permitted and the Commissioner is of the opinion that he is chargeable to income tax for that year, he may, according to the best of his judgment, determine the amount of the chargeable income of such person and assess him accordingly; but such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(4) In any case where a person has been required to lodge accounts and other information with the Commissioner under section 12, any reference above to his return includes a reference to any such accounts and information.

(5) Subject to section 174, an assessment under this section for any year of assessment may not be made after the end of the period of six years immediately following that year.

172 Assessments to corporation tax

(1) The Commissioner may assess any company chargeable to corporation tax for a corporation tax year before the expiry of the period of six years immediately following that year.

(2) Where a company has delivered accounts for an accounting period and any other information which the Commissioner may require, the Commissioner may-

(a) accept the accounts and other information and make an assessment accordingly; or

(b) refuse to accept the accounts or other information and, to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly.

(3) Where a person has not delivered accounts for an accounting period within the time permitted and the Commissioner is of the opinion that he is chargeable to corporation tax for that period, he may, according to the best of his judgment, determine the amount of the chargeable income of the company and make an assessment accordingly; but such an assessment shall not affect any liability otherwise incurred by the company by reason of its failure or neglect to deliver a return.

(4) Where it appears to the Commissioner that the beginning or end of an accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding twelve months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either-

(a) the Commissioner on further facts coming to his knowledge sees fit to revise it; or

(b) on an appeal to the Tribunal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the accounting periods, and there shall be made such other assessments for any such periods or any of them as might have been made at the time the assessment appealed against was made.

(5) Subject to section 174, an assessment under this section for any corporation tax year may not be made after the end of the period of six years immediately following that year.

(6) This section has effect subject to any other provision of this Ordinance making provision with respect to assessments to corporation tax.

173 Additional assessments

(1) Where it appears to the Commissioner that any person chargeable to tax for any chargeable period has been assessed at a less amount than that which ought to have been charged, the Commissioner may, according to the best of his judgment, assess the additional amount of tax not charged by the earlier assessment and, in the case of income tax, interest shall be due as if the tax had been charged in the earlier assessment.

(2) The provisions of this Ordinance relating to notices of assessment, appeals and other proceedings under this Ordinance shall apply to any additional assessment under this section and to the tax charged under the assessment.

(3) An additional assessment under this section may not be made more than two years after the date on which the original assessment was made.

174 Late assessments in cases of fraud or neglect

(1) An assessment on any person ("the person in default") for the purpose of making good to the government a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than-

(a) in the case of an assessment to income tax, twenty years after the 31st August next following the year of assessment to which it relates; and

(b) in the case of an assessment to corporation tax, twenty-one years after the end of the accounting period to which it relates.

(2) Where the person in default carried on a business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the business for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or any of his partners.

(3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by this Ordinance.

175 Notices of assessment and objections to and amendments of assessments

(1) Where an assessment is made on any person under this Part, the Commissioner shall give notice of it to the person as soon as is reasonably practicable after it is made, stating the amount of his chargeable income and the amount of tax payable by him, and informing him of his rights under this section; and a notice under this subsection is referred to in this Ordinance as a notice of assessment.

(2) Any person who is given a notice of assessment may by notice to the Commissioner object to the assessment.

In this section "the person assessed" means the person or company to whom a notice of assessment is given.

(3) A notice under subsection (2) ("a notice of objection") shall state precisely the grounds on which the person assessed objects to the assessment.

(4) A notice of objection shall be made within 30 days from the date of the service of the notice of assessment to which it relates but the Commissioner shall, if satisfied that owing to any reasonable cause (whether absence from the Falkland Islands or sickness or any other cause) the person assessed was prevented from making the application within the 30 days allowed, extend that period to such longer period as may be reasonable in the circumstances.

[S. 5(4)/Ord. 23/02/w.e.f. 1/1/03.]

(5) On receipt of a notice of objection the Commissioner shall reconsider the assessment and may require the person assessed-

(a) to furnish such particulars as the Commissioner may require with respect to that person's income; and

(b) to produce all books or other documents in his custody or under his control relating to such income.

(6) The Commissioner may summon any person whom he has reasonable grounds for believing to be able to give evidence respecting the assessment to attend before him, and may examine such person on oath or otherwise, but a person shall not be required to give any evidence under this subsection which he could not be compelled to give in an action in the Supreme Court.

(7) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Commissioner the amount at which he is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon that person.

(8) The person assessed may not appeal against the assessment under section 181 unless-

(a) he has given notice of objection to the assessment under this section; and

(b) the Commissioner has completed his reconsideration of the assessment under this section.

176 Power to call for documents of taxpayer and others

(1) The Commissioner may serve a notice under this section for the purpose of enquiring into the tax liability of any person ("the taxpayer") in any case where he has reasonable grounds for believing-

(a) that the taxpayer may have failed or may fail to comply with any provision of this Ordinance; and

(b) that any such failure may have prejudiced or may prejudice the proper assessment or collection of tax,

but he may not otherwise serve a notice under this section.

(2) The provisions of this section are subject to sections 177 and 178 and for the purposes of this section-

(a) "third party notice" means a notice under subsection (4) below;

(b) any reference to a tax liability includes a reference to the amount of the tax liability; and

(c) any reference to a taxpayer's failure to comply with any provision of this Ordinance includes a failure by a person assisting him as mentioned in section 178(10)(a).

(3) The Commissioner may by notice require a person-

(a) to deliver to the Commissioner such documents as are in that person's possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which that person is or may be subject; or

(b) to give the Commissioner such particulars as the Commissioner may reasonably require as being relevant to any such liability.

(4) The Commissioner may by notice require a person-

(a) to deliver to the Commissioner; or

(b) if that person so elects, to make available for inspection by a named officer of the Commissioner,

such documents as are in his possession or power and as (in the Commissioner's reasonable opinion) contain, or may contain, information relevant to any tax liability to which a taxpayer is or may be, or may have been, subject.

(5) A person may comply with a notice under this section by delivering copies of documents instead of the originals if (but only if) any such copy-

(a) is a facsimile of the original (whether photographic or other); and

(b) where so required by the Commissioner in the case of any documents specified in the notice, the originals are made available for inspection by a named officer of the Taxes Office,

and references in this section and sections 177 and 178 to documents shall be construed accordingly.

(6) A notice shall not be served on a person under this section unless that person has previously been given a reasonable opportunity to deliver or, as the case may be, to deliver or make available the documents in question or to furnish the particulars in question.

(7) A notice under this section shall specify the time, not being less than thirty days after the date of the notice, within which the documents are to be delivered, or delivered or made available, or the particulars to be furnished.

(8) The Commissioner may take copies of any document to which a notice under this section relates.

177 Documents, etc., excluded from section 176 notices

(1) A notice under section 176 may not relate to documentary and other records concerning an individual (whether living or dead) who can be identified from them if-

(a) they relate to his physical or mental health, to spiritual counselling or assistance given or to be given to him; or

(b) they relate to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who-

(i) by reason of his office or occupation has responsibilities for personal welfare; or

(ii) by reason of an order of a court has responsibilities for super-vision.

(2) A notice under section 176 may not relate to material acquired or created for the purposes of journalism which is in the possession of a person who acquired or created it for the purposes of journalism; and for this purpose a person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

(3) Any reference in section 176 to particulars does not include a reference to particulars contained in records or material falling within subsection (1) or (2) above.

(4) A notice under section 176(3) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him, and a third party notice does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the taxpayer.

In this subsection "appeal" means an appeal relating to tax.

178 Special provisions relating to third party notices

(1) In this section-

(a) a "third party notice" means a notice under section 176(4); and

(b) "taxpayer" has the meaning given by section 176 (1).

(2) A third party notice shall name the taxpayer to whom it relates unless-

(a) the Commissioner does not know that person's identity or, if the notice relates to a class of taxpayers, those persons' individual identities; and

(b) the Commissioner is satisfied that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(3) A third party notice may relate to the tax liability of a company which has ceased to exist or an individual who has died, but in the case of a taxpayer who has died it may not be served more than six years after his death.

(4) A copy of a third party notice which names the taxpayer shall be given to that taxpayer unless the Commissioner has reasonable grounds for suspecting him of fraud.

(5) Subsection (4) above does not require the disclosure of any information if-

(a) it would, or might, identify any person who has provided the Commissioner with any information which he took into account in deciding whether to serve the notice; or

(b) the Commissioner has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.

(6) Where the taxpayer is not named in a third party notice, the person to whom the notice is given may object to the notice on the ground that it would be onerous for him to comply with it; and if the matter is not resolved by agreement, it shall be referred to the Appeal Tribunal who may confirm, vary or cancel that notice.

Such an objection shall be made by way of notice which shall be given to the Commissioner within thirty days after the date of the third party notice.

(7) A third party notice does not oblige a person to deliver or make available any document the whole of which originates more than six years before the date of the notice unless-

(a) the Commissioner has reasonable grounds for believing that tax has, or may have been, lost to the government owing to the fraud of the taxpayer; and

(b) the notice expressly disapplies this subsection.

(8) A third party notice does not oblige a lawyer to deliver or make available, without his client's consent, any document with respect to which a claim to legal professional privilege could be maintained.

(9) Subject to subsections (10) and (11) below, a third party notice-

(a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment; and

(b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of communications between-

(i) himself and the person whose tax adviser he is; or

(ii) himself and any other tax adviser of that person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

In this subsection "tax adviser" means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).

(10) Subject to subsection (11) below, subsection (9) above shall not have effect in relation to any document which contains information-

(a) explaining any information, return, accounts or other document which the person to whom the notice is given has assisted any other person in preparing for, or delivering to, the Commissioner and which he knows will be, or is likely to be, used for any purpose of tax; or

(b) in the case of a third party notice which does not name the taxpayer in question, giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(11) Subsection (9) above shall not apply in relation to any document if the information referred to in that subsection is contained in some other -document, and the person to whom the notice is given either-

(a) delivers that other document or so much of it as contains the information to the Commissioner; or

(b) makes that other document, or so much of it as contains the information, available for inspection by an officer of the Commissioner.

178A Information about interest credited or received in the Falkland Islands

(1) The Commissioner may by notice require any bank which, in the ordinary course of that business, receives or retains money in such circumstances that interest becomes payable on that money, to make and deliver to the Commissioner, within the time specified in the notice, a return of all interest paid or credited in respect of such money by the bank during such period as may be specified in the notice.

(2) A return under subsection (1) shall give-

(a) the names and addresses of the persons to whom the interest was paid or credited and, in each case, the amount of the interest actually paid or credited; and

[S. 9(4)/Ord. 6/06/w.e.f. 1/3/06.]

(b) such other information as may be prescribed, which may include the name and address of the person beneficially entitled to the interest paid or credited.

(3) A notice under subsection (1)-

(a) shall, without prejudice to section 213, be effective if served in the Falkland Islands on a manager of the bank;

(b) shall not specify a period which ended more than three years before the date of the service of the notice;

(c) may require the return to be made in such form and by such means as may be specified in the notice.

(4) This section applies only to money received or retained in the Falkland Islands.

(5) Rules may prescribe cases in which a notice under this section may not require information to be provided.

(6) In such cases as may be prescribed any bank served with a notice under subsection (1) shall allow an officer authorized for the purposes of this section to inspect any books, documents and other records of the bank, and rules made for the purposes of this subsection-

(a) may make different provision in relation to different cases or descriptions of case; and

(b) may include such supplementary, incidental, consequential or transitional provisions as appear to the Governor to be necessary or expedient.

[S. 21/Ord. 23/02/w.e.f. 1/1/03.]

179 Burden of proof

The burden of proof of exemption from or abatement of the tax levied under this Ordinance shall lie on the party claiming the exemption or abatement.

Appeals to the Tax Appeal Tribunal

180 Tax Appeal Tribunal

(1) There shall continue to be a Tax Appeal Tribunal ("the Tribunal") constituted in accordance with this section to exercise functions conferred upon it by this Ordinance.

(2) The Tax Appeal Tribunal shall have at least five and not more than seven members appointed by the Governor.

(3) A person who is-

(a) an elected member of the Legislative Assembly; or

[Revision w.e.f. 31/07/2017]

(b) a public officer in any public office in the Finance Department,

is not qualified to be appointed as a member of the Tribunal and any person who, under this subsection, is not qualified to be appointed as a member of the Tribunal ceases, if he is already a member of the Tribunal, to hold office as such immediately he ceases to be qualified under this subsection to be appointed to be a member of the Tribunal.

(4) A member of the Tribunal who has, or whose partner, spouse or child has, any direct interest in any matter falling to be considered by the Tribunal shall not take any part in the consideration of that matter by the Tribunal, and shall declare that interest if he is present at a meeting of the Tribunal at which the matter is considered and withdraw from such a meeting during the Tribunal's consideration of that matter.

(5) No business shall be transacted (except to adjourn) by the Tribunal unless at least three of its members are present, but the Tribunal may otherwise act notwithstanding a vacancy for the time being in its members.

A member of the Tribunal who has declared an interest shall not be counted as being present for the purposes of this subsection.

(6) The Governor shall appoint one of the members of the Tribunal to be the Chairman and, subject to subsection (7), the Chairman shall preside at all meetings of the Tribunal at which he is present.

(7) Where the Chairman is, by virtue of subsection (4), unable to take part in consideration of a matter or is absent from the meeting of the Tribunal, the members of the Tribunal present (where appropriate, after withdrawal of the Chairman) shall elect one of their members to preside at that meeting or for so much of it as the Chairman is absent.

181 Appeals to the Tribunal

(1) Any person aggrieved-

(a) by an assessment of liability to tax or entitlement to repayment of tax already paid or of entitlement to repayment of any sum already paid on account of tax;

(b) by a decision of the Commissioner with respect to that person's entitlement to the benefit of a deduction, allowance or relief under this Ordinance or the Income Tax Ordinance;

(c) by a decision that a person is or was at any time resident or ordinarily resident or not resident in the Falkland Islands for the purposes of this Ordinance or the Income Tax Ordinance;

(d) by a decision that any income of a person is, for the purposes of this Ordinance or the Income Tax Ordinance, unearned income or, as the case may be, earned income; or

(e) by any other decision of the Commissioner under this Ordinance or the Income Tax Ordinance,

may, subject to section 175, appeal to the Tribunal in accordance with this section.

(2) An appeal may not be brought under subsection (1) against-

(a) a requirement to file a return of income;

(b) a requirement to produce any accounts or other information relating to a business;

(c) a requirement to pay interest on any tax unpaid or paid late;

(d) a decision to take proceedings for the recovery of any tax alleged to be due and unpaid;

[S. 9(5)/Ord. 6/06/w.e.f. 1/3/06.]

(e) a decision to prosecute for any offence under this Ordinance or the Income Tax Ordinance;

(f) a decision to require payment of a penalty under this Ordinance or the Income Tax Ordinance;

(g) a decision to serve a notice under paragraphs (3)(1) or (6)(1) of Schedule 6.

[S. 5/Ord. 8/21/w.e.f. 30/9/21.]

(3) For the purposes of subsection (1), "person aggrieved" means-

(a) the person directly affected by the decision in question, or, where he is deceased, his personal representative;

(b) in relation to a bankrupt, his trustee in bankruptcy or, where there is none, the Official Receiver or person acting as Official Receiver in relation to the bankrupt's estate;

(c) in relation to the estate of a deceased person, the deceased person's personal representative;

(d) in relation to a settlement of property, the trustees for the time being of that settlement; and

(e) in relation to a person under an incapacity-

(i) if that person is a minor, his parents or either of them or any other person who is his guardian;

(ii) if that person suffers from a mental incapacity, the person who has been appointed by the Supreme Court as his receiver or, if there be none, any person appearing to the Tribunal to have a sufficient interest in his welfare; and

(iii) in relation to a company in the course of being wound up, the liquidator.

(4) Notice of appeal under this section must be sent or delivered to the Clerk to the Tribunal within twenty-one days of the date on which the decision of the Commissioner under section 175 relating to the assessment or decision in question is notified to the appellant or such longer period as the Commissioner, in his discretion, may allow.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(5) Notice of appeal shall specify the decision or decisions the subject of the appeal, the appellant's grounds of appeal and whether the appellant requests an oral hearing of the appeal by the Tribunal or whether he is content for the appeal to be dealt with by written representations.

(6) Schedule 3 to this Ordinance shall have effect with respect to appeals under this section.

(7) On consideration of any written representations made in accordance with Schedule 3, or at the hearing if one is held, the Tribunal may allow the appellant to put forward any ground not specified in the notice of appeal, and take it into consideration.

(8) On receiving a notice of appeal under this section, the Clerk to the Tribunal shall transmit a copy of it to the Commissioner.

182 Clerk to the Tribunal

(1) The Governor shall appoint a public officer to be the Clerk to the Tribunal.

(2) The duties of the Clerk shall be-

(a) to have custody of the records at the Tribunal;

(b) to receive notices of appeal and written representations in connection with any appeal;

(c) to keep minutes of all meetings of the Tribunal;

(d) to notify the parties to any appeal to the Tribunal of the determination of the appeal by Tribunal and the reasons for that determination;

(e) any other duty imposed on him by this Ordinance; and

(f) any other duty, not inconsistent with this Ordinance, imposed on him by the Chairman of the Tribunal.

183 Postponement of tax on objection and appeal

(1) This section applies where a person ("the tax-payer") has given notice to the Commissioner under section 175 objecting to an assessment to income tax or corporation tax.

(2) Except as otherwise provided by the following provisions of this section, the tax charged by the assessment shall be due and payable as if a notice of objection had not been given.

(3) If the tax-payer has grounds for believing that he is overcharged to tax by the assessment, he may, by notice given to the Commissioner within thirty days after the date of the issue of the notice of assessment, apply to the Commissioner for a determination of the amount of tax the payment of which should be postponed pending the determination of the objection.

A notice of application under this subsection shall state the amount by which the tax-payer believes that he is overcharged to tax and his grounds for that belief.

(4) An application under subsection (3) above may be made more than thirty days after the date of the issue of the notice of assessment if there is a change in the circumstances of the case as a result of which the tax-payer has grounds for believing that he is overcharged to tax by the assessment.

(5) If, after any determination of the amount of tax the payment of which should be so postponed, there is a change in the circumstances of the case as a result of which the tax-payer or the Commissioner has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, then before the determination of the objection-

(a) the tax-payer may, by notice given to the Commissioner stating what the amount to be postponed should be and the reasons for the change, apply to the Commissioner for a further determination of the amount; or

(b) the Commissioner may make a new determination, and give notice to the tax-payer stating the amount newly determined and the reasons for the new determination.

(6) An application under subsection (3) or (5) above shall be heard and determined in the same way as the notice of objection, and the Commissioner shall not be precluded from determining the objection or any application or further application under subsection (5) above by reason of his having heard and determined any earlier application in the case under this section.

(7) The amount of tax the payment of which shall be postponed pending the determination of the objection shall be the amount (if any) in which it appears to the Commissioner, having regard to the representations made and any lawful evidence adduced, that there are reasonable grounds for believing that the tax-payer is overcharged to tax.

(8) In the case of a determination made on an application under subsection (3) or (5) above, any tax the payment of which is not postponed or which ceases to be postponed shall be payable-

(a) where the tax concerned is income tax for any year of assessment-

(i) 30 days after the date of the determination; or

(ii) 90 days after the date of the assessment; or

(iii) 1 October in that year,

[S. 19/Ord. 2/11/w.e.f. 1/1/11.]

whichever is the later;

(b) where the tax concerned is corporation tax, thirty days after the date of the determination.

(9) In the case of a determination under subsection (5), any tax overpaid shall be repaid.

(10) If the tax-payer and the Commissioner come to an agreement, whether in writing or otherwise, as to the amount of tax the payment of which should be postponed pending the determination of the objection, the like consequences shall ensue under subsections (8) and (9) above as would have ensued if the Commissioner had made a determination to that effect under subsection (7) above on the date when the agreement was come to, but without prejudice to the making of a further agreement or of a further determination under that subsection.

(11) Where an agreement is not in writing-

(a) subsection (10) above shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice given by the Commissioner to the tax-payer or by the tax-payer to the Commissioner; and

(b) the reference in that subsection to the time when the agreement was come to shall be construed as a reference to the time of the giving of the notice of confirmation.

(12) Subject to subsection (13), on the determination of an objection to an assessment, the date on which any tax payable in accordance with that determination is payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no objection, be-

(a) where the tax concerned is income tax-

(i) thirty days after the date on which the Commissioner issues to the tax-payer a notice of the total amount payable in accordance with that determination; or

[S. 9(6)/Ord. 6/06/w.e.f. 1/3/06.]

(ii) ninety days after the date of the assessment,

whichever is the later;

(b) where the tax concerned is corporation tax, thirty days after the date of issue of the notice referred to in paragraph (a)(i).

(13) On the determination of an objection to an assessment any tax overpaid shall be repaid.

(14) No proceedings shall be instituted for the recovery of any tax due and payable in accordance with subsection (12), or of any interest due on such tax, until twenty-one days after the date on which the Commissioner's determination of the objection has been notified to the tax-payer, and if an appeal is lodged by the tax-payer against that determination, the references in the preceding provisions of this section to the objection shall thereafter have effect as references to the appeal.

If any tax has been recovered by the Commissioner before the appeal is lodged, then, so far as concerns that tax, the reference above to the preceding provisions of this section shall not include subsection (12).

[S. 22/Ord. 16/13/w.e.f. 1/1/14.]

(15) Interest shall be due on any corporation tax repaid in accordance with this section at the rate of 2 per cent per annum under base lending rate.

[S. 22/Ord. 23/02/w.e.f. 1/1/03.]

Collection of tax and interest on late tax

[Revision 28/07/23]

184 Collection of tax and interest on tax

(1) The Commissioner shall from time to time deliver to the collector lists of the names and addresses of persons assessed to tax, together with the amount payable by each person, and it shall be the duty of the collector to take all reasonable steps to ensure the payment of all assessed tax.

(2) In any case where notice of an objection or of an appeal has been given, collection of tax shall be subject to the provisions of sections 171 to 183.

(3) Without prejudice to any other provision of this Ordinance, tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or any collector in his official name with full costs of suit from the person charged therewith as a debt due to the Crown.

(4) In any case where tax which has been assessed remains unpaid after the date on which it was due, the Commissioner or any collector appointed under this Ordinance shall serve a demand note upon the person liable to pay the tax for the amount of the tax remaining unpaid together with the amount of interest due, and if payment is not made within thirty days from the date of the service of such demand note, the collector may proceed to enforce payment in accordance with Schedules 4 and 5 to this Ordinance.

(5) Where a demand note is served under subsection (4) above, the interest shall be recoverable in respect of the period after as well as before the service of the note and it is sufficient, in

relation to a period falling after the date of the demand note, for it to state that interest is payable as specified in section 11(2) or 33(1), as the case may be.

(5A) Where interest is due on tax which has been paid (without an assessment) after the date on which it was due or after postponement under section 183 and the interest or any part of it remains unpaid, then-

(a) the Commissioner or any collector appointed under this Ordinance may serve a demand note on the person who was liable to pay the tax for the amount of interest remaining unpaid; and

(b) if payment is not made within thirty days from the date of service of the demand note, the collector may proceed to enforce payment in accordance with Schedules 4 and 5 to this Ordinance.

[S. 23/Ord. 23/02/w.e.f. 1/1/03.]

(6) Any penalty under this Ordinance for which no other means of recovery is provided shall be treated as if it were an amount of assessed tax due at the time a notice issued by the Commissioner specifying the amount of the penalty is served on the person in default and-

(a) the Commissioner may not issue any such notice more than six years, or in the case of fraud more than twenty years, after the default in respect of which the penalty is due occurred or, if it occurred over a period of time, after the end of that time; and

(b) any person issued with a notice under this subsection may appeal to the Tribunal against the notice within twenty-one days of the date of service of the notice and section 181(5) to (8) and Schedule 3 shall apply.

185 Recovery of tax in respect of petroleum activities, etc

Schedule 6, which makes provision with respect to information to be obtained from licensees, deductions of withholding tax and the recovery of unpaid tax in connection with exploration or exploitation activities or rights, has effect.

[S. 6/Ord. 8/21/w.e.f. 1/1/22.]

Repayment of tax

186 Repayment of income tax

(1) If it is proved to the satisfaction of the Commissioner on a claim made by any person that he has paid income tax, by deduction or otherwise, for any year of assessment without the making of an assessment in excess of the amount with which he is properly chargeable, that person shall be entitled to have the excess refunded to him.

(1A) If a person, entitled to a refund under subsection (1) has an amount remaining unpaid under this Ordinance or subsidiary legislation made under it or under the Medical Services Tax Ordinance 2010 or subsidiary legislation made under it, and that amount has become due, the Commissioner may set off the refund or repayment against the unpaid amount that has become due.

[S. 53/Ord. 13/10/w.e.f. 1/1/11; & S. 7/Ord. 8/21/w.e.f. 30/9/21.]

(2) Every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates.

(3) The Commissioner shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Treasurer shall cause repayment to be made in conformity therewith.

(4) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any chargeable period as regards which that person has failed or neglected to deliver a return or has been assessed in a sum in excess of the amount contained in his return, provided that he has received notice of the assessment made upon him for that year, unless it is proved to the satisfaction of the Commissioner that such failure or neglect to deliver a true and correct return did not proceed from any fraud or wilful act or omission on the part of that person.

187 Refund of overpayments of corporation tax

(1) If, with respect to any accounting period-

(a) a company has paid an amount of corporation tax without the making of an assessment; and

(b) the company has grounds for believing that the amount paid exceeds the company's probable liability for corporation tax,

the company may by notice to the Commissioner make a claim for the repayment to the company of the amount of that excess; but a claim may not be made under this subsection after an assessment to corporation tax for the period becomes final or, if there is no assessment, after the expiry of the period of six years beginning with the end of the accounting period in question.

(2) A notice under subsection (1) above shall state the amount which the company considers should be repaid and the grounds referred to in paragraph (b) above, and the Commissioner shall repay the amount claimed if he is satisfied that the claim is justified.

(2A) …

[S. 54/Ord. 13/10/w.e.f. 1/1/11: S. 8/Ord. 8/21/w.e.f. 30/9/21.]

(3) If, apart from this subsection, a claim would fall to be made under subsection (1) above at a time when the company concerned has appealed against an assessment to corporation tax for the period in question but that appeal has not been finally determined, that subsection shall have effect as if for the words from "make a claim" to "excess" there were substituted "apply to the Commissioners to whom the appeal stands referred for a determination of the amount which should be repaid to the company pending a determination of the company's liability for the accounting period in question"; and such an application shall be determined in the same way as the appeal.

(4) Where on an appeal against an assessment to corporation tax a company makes an application under section 183(3) or (5), that application may be combined with an application under subsection (1) above.

(5) Interest shall be due on any amount repaid under this section at the rate of 2 per cent per annum under base lending rate.

187A. Set off

If a company is entitled to a refund or repayment in respect of an overpayment of corporation tax and has an amount remaining unpaid under this Ordinance or subsidiary legislation made under it or under the Medical Services Tax Ordinance 2010 or subsidiary legislation made under it and that amount has become due, the Commissioner may set off the refund or repayment against the unpaid amount that has become due.

[S. 9/Ord. 8/21/w.e.f. 30/9/21.]

Offences and penalties

188 Penal provisions relating to fraud, etc.

(1) This section applies in any case where a person wilfully and with intent to evade or to assist any other person to evade tax-

(a) omits from a return of income any income which should be included; or

(b) makes any false statement or entry in any return of income; or

(c) gives any false answer, whether orally or in writing to any question or request for information asked or made in accordance with this Ordinance; or

(d) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or any other document or falsifies or authorizes the falsification of any books of account or records or any other document; or

(e) destroys or conceals any document which he is required to deliver to the Commissioner or which he is required to make available for inspection by an officer of the Commissioner, or any document which he has been put on notice may be made the subject of such a requirement; or

(f) makes use of any fraud, art or contrivance whatsoever or authorizes the use of any such fraud, art or contrivance;

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding the maximum of level 8 on the standard scale.

(3) In any case falling within subsection (1) above, the person concerned shall be liable to a penalty equal to treble the amount of tax for which he or the person whom he has assisted is liable, as the case may be, under this Ordinance for the chargeable period in respect of or during which the offence was committed.

(4) A person does not commit an offence under subsection (1)(e) above if he destroys a document-

(a) with the written permission of the Commissioner; or

(b) after he has delivered the document in question to the Commissioner or has made it available for inspection by an officer of the Commissioner.

(5) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return of income by or on behalf of any person or in any books of account or other records maintained by or on behalf of any person, that person shall be presumed, until the contrary is proved, to have made that false statement or entry with intent to evade tax.

189 Penalties for failure to make returns, making incorrect returns etc.

(1) The following provisions of this section shall apply where a person without reasonable excuse-

(a) fails to make a return or to give any notice or information in accordance with the requirements of this Ordinance; or

(b) makes an incorrect return by omitting or understating any income which he is required to include in a return of income; or

(c) gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or of a partnership; or

(d) fails to deliver any document to the Commissioner or to make any document available for inspection by an officer of the Commissioner,

and any such person is referred to below as "the person concerned".

(2) In any case falling within subsection (1) above, the person concerned commits an offence and shall be liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(3) In any case falling within subsection (1) above where no other civil penalty is provided, the person concerned shall be liable to a penalty equal to double the amount of tax which-

(a) in a case falling within subsection (1)(a) above, is payable by that person for the accounting period to which the return or notice or information related; or

(b) in any case, has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

190 Penalties for offences

A person convicted of an offence under this Ordinance for which no other penalty is provided is liable on conviction to a fine not exceeding the maximum of level 5 on the standard scale.

191 Saving for other criminal proceedings

The provisions of this Ordinance shall not affect any criminal proceedings, except that a person shall not be prosecuted more than once for the same offence.

192 Prosecutions, etc., to commence within six years

(1) Any prosecution against any person for the commission of any offence against the provisions of this Ordinance shall not be brought unless it is commenced in the chargeable period in which the offence is or is alleged to have been committed or before the expiry of the period of six years beginning with the end of that chargeable period.

(2) Subject to any contrary provision, proceedings for recovery of any penalty under this Ordinance for any act or omission shall not be commenced after the expiry of the period of six years beginning with the end of the chargeable period in which the act or omission is or is alleged to have been done or not to have been done.

(3) Where the Commissioner did not know and had no reasonable grounds for suspecting that an offence had been committed or that a penalty was due, the six years referred to in subsections (1) and (2) above shall not begin to run until the end of the period in which the Commissioner did so know or had reasonable grounds for so suspecting.

Preservation of records

192A Accounting records to be kept

(1) Any person within the charge to tax must preserve all accounting records and documents that are necessary to explain —

(a) any accounts that must be delivered under sections 12 or 30, and

(b) the computation of taxable income stated in any return that must be furnished under sections 12 or 30,

for at least 6 years after the end of the chargeable period to which the accounts or return relate.

[Sch. /Ord. 20/2022/w.e.f. 01/01/2023]

(2) The Commissioner may by notice direct any person to keep records and documents relating to such chargeable period or periods as may be specified in the notice preserved in accordance with subsection (1)(a) or (b) for such longer period as may be so specified.

(3) A chargeable period may not be specified in a direction given to any person under subsection (2) if that person has submitted a return under section 12 or 30 for that period and no objection or appeal is pending in relation to that return and no enquiry is being made under section 175 in relation to that person as respects that chargeable period.

(4) Any person who fails to comply with subsection (1) or with a notice under subsection (2) commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(5) Any person who fails to comply with subsection (1) or with a notice under subsection (2) as respects accounting records or other documents relevant to the accounts or return for a chargeable period shall be liable to a penalty equal to -

(a) double the tax which the person is liable to pay for that period; or

(b) £5,000,

whichever is the greater.

[Sch. /Ord. 20/2022/w.e.f. 01/01/2023]

(6) This section shall be deemed to have come into force on 15th November 2004 and accordingly this section applies to accounting records or other documents in existence or coming into existence on or after that date.

[S. 4(1)/Ord. 22/04/w.e.f. 15/11/04.]

PART X
GENERAL AND SUPPLEMENTARY PROVISIONS

Agents, trustees and others

193 Appointment and duties of agent

(1) In this section-

"agent" means a person appointed as such under subsection (2);

"appointment notice" means a notice issued by the Commissioner under subsection (2) appointing an agent;

"moneys" includes salary, wages and pensions payments and any other remuneration whatsoever;

"principal" means the person in respect of whom an agent is appointed.

(2) The Commissioner may, in his discretion, by notice addressed to any person-

(a) appoint him to be the agent of another person for the purposes of the collection and recovery of tax due from that other person; and

(b) specify the amount of that tax to be collected and recovered.

(3) An agent shall pay the tax specified in his appointment notice out of any moneys which may, at any time during the twelve months following the date of the notice, be held by him for, or due from him to, his principal.

(4) Where an agent claims to be, or to have become, unable to comply with subsection (3) by reason of the lack of moneys held by, or due from him, he shall, as soon as may be practicable, give notice to the Commissioner of that fact, and the notice must set out in full the reasons for his inability so to comply.

(5) The Commissioner may-

(a) accept a notice under subsection (4) and cancel or amend the appointment notice accordingly; or

(b) if he is not satisfied by the reasons set out in the notice, issue a notice to the agent rejecting the agent's notice.

(6) Unless and until notice is given by an agent under subsection (4)-

(a) sufficient moneys for the payment of the tax specified in his appointment notice shall be presumed to be held by him for, or due from him to, his principal; and

(b) he may not assert the lack of such moneys as a defence in any proceedings for the collection or recovery of such tax.

(7) For the purposes of this section, the Commissioner may by notice at any time require any person to furnish him within a reasonable time, not being less than thirty days from the date of service of such notice, with a return showing any moneys which may be held by such person for, or due by him to, any other person from whom tax is due.

(8) Where an agent fails to pay any amount of tax specified in his appointment notice within thirty days-

(a) of the date of service of the notice on him; or

(b) of the date on which any moneys come into his hands for, or become due by him to, his principal,

whichever is the later; and-

(i) he has not given notice under subsection (4); or

(ii) he has given notice under that subsection but the notice has been rejected by the Commissioner,

the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such amount as if it were tax due and payable by the agent, the due date for the payment of which was the date upon which such amount should have been paid to the Commissioner under this subsection.

(9) An agent who has made any payment of tax under this section shall for all purposes be deemed to have made the payment with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of such payment made against all proceedings, civil or criminal, and all process, judicial or extra-judicial, notwithstanding any provision to the contrary in any written law, contract or agreement.

194 Appointment by Governor of UK tax agent

(1) For the purpose of facilitating the assessment to income tax or corporation tax of the chargeable income of persons resident or ordinarily resident or carrying on business through a branch or agency in the United Kingdom, the Governor may appoint an agent in the United Kingdom who-

(a) shall make enquiries on behalf of the Commissioner in respect of any person who applies to be dealt with through such agent; and

(b) shall ascertain and report to the Commissioner the amount of the chargeable income of such person in accordance with this Ordinance; and

(c) shall forward to the Commissioner the accounts and computations upon which his report is based.

(2) If it appears to the Commissioner that any error has occurred in the accounts or computation referred to in subsection (1)(c), he may refer the report back for further consideration.

(3) The Commissioner may authorize an agent appointed under this section to issue assessments in the name of the Commissioner.

(4) Nothing in this section shall prevent an appeal in accordance with Part IX of this Ordinance.

195 Special provisions relating to non-residents

(1) A person not resident in the Falkland Islands ("a non-resident person"), whether a British subject or not, shall be assessable and chargeable in the name of his trustee, guardian, or committee, or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner and to the like amount as the non-resident person would be assessed and charged if he were resident in the Falkland Islands and in the actual receipt of such income.
(2) Subsections (2A) and (2B) apply to a non-resident person who-

(a) is either-

(i) ordinarily resident in the Falkland Islands; or

(ii) present in the Falkland Islands for part of the year immediately preceding a year of assessment; and

(b) does not make a claim under subsection (3).

[S. 20(2)/Ord. 2/11/w.e.f. 1/1/11.]

(2A) When the chargeable income of a non-resident person to whom this subsection applies is calculated for the year of assessment, the non-resident person may deduct-

(a) compulsory contributions made under section 10 of the Retirement Pensions Ordinance; and

(b) the personal allowance under section 16(1).

[S. 20(3)/Ord. 2/11/w.e.f. 1/1/11.]

(2B) A non-resident person to whom this subsection applies is not entitled to the following-

(a) deductions under section 15 for voluntary contributions made under section 12 of the Retirement Pensions Ordinance;

(b) deductions under section 15A for annual subscriptions;

(c) relief under section 67 for contributions to an approved retirement benefit schemes or the Falkland Islands Pensions Scheme; or

(d) relief under section 68 for contributions under approved personal pension arrangements;

(e) carry-forward relief for pensions under section 70.

[S. 20(3)/Ord. 2/11/w.e.f. 1/1/11 and. S. 23(a)/Ord. 16/13/w.e.f. 1/1/14]

(3) In the case of any non-resident person who makes a claim under this subsection in relation to the year of assessment in which that person reaches the age of sixty-one years or any later year, the total amount of the deductions to be allowed to him under those Chapters shall not exceed an amount which would reduce the tax payable by him below the amount which bears the same proportion to the amount which would be payable by him if he were chargeable to tax on his total income from all sources, including income which is not subject to tax under this Ordinance, as the amount of his income subject to tax bears to such total income from all sources.

[S. 6/Ord. 26/98/w.e.f. 1/1/99.]

(4) A non-resident person shall be assessable and chargeable in respect of any income arising, whether directly or indirectly, through or from any attorneyship, factorship, agency, receivership, branch or management, and shall be so assessable or chargeable in the name of the attorney, factor, agent, receiver, branch, or manager.

(5) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that owing to-

(a) the close connection between the resident person and the non-resident person; and

(b) the substantial control exercised by the non-resident person over the resident person,

the course of business between those persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, then the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(6) Where it appears to the Commissioner that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot be readily ascertained, the Commissioner may, if he thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is so chargeable.

The amount of the percentage shall in each case be determined having regard to the nature of the business.

(7) In any case where an assessment is made under subsection (6) above, the provisions of this Ordinance relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars are to be delivered by persons acting for incapacitated or non-resident persons of income to be charged.

(8) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or other agent where such broker or general commission agent or other agent is not an authorized person carrying on the regular agency of the non-resident person, or a person chargeable as if he were an agent in pursuance of subsections (5) to (7), in respect of gains or profits arising from sales or transactions carried through such a broker or agent.

(9) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of subsections (5) to (7) in the name of a resident person shall not of itself make him chargeable in respect of gains or profits arising from those sales or transactions.

(10) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch or manager in respect of any gains or profits arising from the sale of goods or produce manufactured or produced outside of the Falkland Islands by the non-resident per-son-

(a) the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioner, or in the case of an appeal, to the Tribunal to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold who has bought from the manufacturer or producer direct; and

(b) on proof to the satisfaction of the Commissioner (or Tribunal) of the amount of the profits on that basis, the assessment shall be made or amended accordingly.

[S. 23(b)/Ord. 16/13/w.e.f. 1/1/14.]

196 Trustees, etc., of incapacitated persons

A receiver appointed by the court, trustee, guardian, curator, or committee having the direction, control, or management of any property or concern on behalf of any incapacitated person shall be chargeable to income tax in like manner and to the like amount as such person would be chargeable if he were not an incapacitated person.

197 Responsibility of company officers

(1) Everything required to be done by a company under this Ordinance shall be done by the company through the proper officer of the company.

(2) Tax due and payable by a company under this Ordinance may (without prejudice to any other means of recovery) be recovered from the proper officer of the company who may retain out of any money coming into his hands on behalf of the company sufficient sums to pay that tax and so far as he does not have sufficient sums, shall be entitled to be indemnified by the company in respect of any liability imposed on him under this section.

(3) For the purposes of this section "the proper officer" means-

(a) if a liquidator has been appointed for the company, the liquidator;

(b) if a liquidator has not been appointed, a director, the secretary or person acting as secretary of the company or such other person as is authorised to act as the proper officer of the company; or

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(c) if neither paragraph (a) nor paragraph (b) applies, the treasurer or person acting as treasurer of the company.

198 Responsibility of trustees and others

(1) The person who is chargeable in respect of an incapacitated person, or in whose name a non-resident person is chargeable, shall be answerable for all matters required to be done by virtue of this Ordinance for the assessment of the income of any person for whom he acts and for paying the tax chargeable on that income.

(2) Every person who in whatever capacity is in receipt of any money or value being income arising from any of the sources mentioned in this Ordinance, or belonging to any other person who is chargeable in respect thereof, or who would be so chargeable if he were resident in the Falkland Islands and not an incapacitated person shall, whenever required to do so by any notice from the Commissioner, prepare and deliver within the period specified in the notice a list signed by him containing-

(a) a true and correct statement of all such income;

(b) the name and address of every person to whom the income belongs; and

(c) such other information as the notice may request being information which the Commissioner requires for the purposes of this Ordinance,

and the provisions of this Ordinance with respect to the failure to deliver lists or particulars in accordance with a notice from the Commissioner shall apply to any such list.

199 Indemnification of representatives

Every person answerable under this Ordinance for the payment of tax on behalf of another person may retain out of any money coming into his hands on behalf of such other person so much thereof as shall be sufficient to pay such tax; and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Ordinance.

Residence of individuals and companies

200 Residence of individuals

(1) In this Ordinance any reference to a person who is ordinarily resident in any place is a reference to a person who is habitually resident in that place except for such absence therefrom as seems to the Commissioner to be of a temporary nature.

(1A) A person shall be regarded for the purpose of subsection (1) as being temporarily absent from the Falkland Islands for any period during which that person is employed in the service of the government of the Falkland Islands and carries out the duties of that employment in the United Kingdom.

[S. 5(1)/Ord. 22/04/w.e.f. 1/1/04.]

(2) In this Ordinance, a reference to an individual who is resident in the Falkland Islands in a year immediately preceding a year of assessment is a reference to a person who is actually in the Falkland Islands for 183 days or more in that preceding year.

[S. 21/Ord. 2/11/w.e.f. 1/1/11.]

(3) For the purpose of this section and any other provision of or under this Ordinance which refers to a period of a person's presence in the Falkland Islands, days of arrival in the Falkland Islands or departure from the Falkland Islands shall be treated as days of presence in the Falkland Islands.

[S. 4(1)/Ord. 18/12/effective in relation to the charge to income tax for years of assessment beginning on or after 1st January 1997 and for the charge to corporation tax for corporation tax years beginning on or after 1st January 1997.]

201 Residence of companies

(1) Subject to subsections (3) and (4) below, a company which is incorporated in the Falkland Islands shall be regarded for the purposes of this Ordinance as resident in the Falkland Islands, and accordingly, if a different place of residence would be given by subsection (2) below or by any rule of law, that place shall no longer be taken into account for those purposes.

(2) In determining for the purposes of this Ordinance the place of residence of a company which is not incorporated in the Falkland Islands or to which subsection (1) above does not apply at the beginning of 1st January 1996 by virtue of any of the following provisions of this section, the place of incorporation or registration shall be regarded as immaterial and its place of residence shall be determined by reference to the abode of the central management and control of the company's business.

(3) For the purposes of this Ordinance a company which-

(a) is no longer carrying on any business; or

(b) is being wound up outside the Falkland Islands,

shall be regarded as continuing to be resident in the Falkland Islands if it was so regarded for those purposes immediately before it ceased to carry on business or, as the case may be, before any of its activities came under the control of a person exercising functions which, in the Falkland Islands, would be exercisable by a liquidator.

(4) Subject to subsection (5) below, subsection (1) above shall not apply until 1st January 1998 in relation to a company which-

(a) carried on business at any time before 1st January 1996; and

(b) was not resident in the Falkland Islands immediately before that date.

(5) If at any time on or after 1st January 1996 a company falling within subsection (4) above becomes resident in the Falkland Islands, subsection (1) shall apply in relation to the company after that time.

Disclosure of information

202 Official secrecy

(1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information and returns relating to the income or items of income of any person as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Justice of the Peace.

(2) Every person having possession of or control over any documents, information or returns relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person-

(a) other than a person to whom he is authorized by the Governor to communicate it; or

(b) otherwise than for the purpose of this Ordinance,

commits an offence.

203 Disclosure of information

(1) Subject to subsection (2), the Commissioner may require any public officer or any officer in the employment of any public body to supply such particulars as may be required for the purposes of this Ordinance and which may be in the possession of such officer.

(2) A person shall not by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy, but section 202 shall be disregarded for the purposes of this subsection.

(2A) The following provisions are to be disregarded for the purposes of subsection (2)-

(a) section 33 of the Medical Services Tax Ordinance; and

[Revision w.e.f. 31/07/2017]

(b) section 220 of the Fisheries (Conservation and Management) Ordinance.

[S. 55(2)/Ord. 13/10/w.e.f. 1/1/11 and Revision w.e.f. 31/07/2017.]

(2B) The Commissioner may make use, for the purposes of this Ordinance, of information provided (or obtained) under the Medical Services Tax Ordinance (or subsidiary legislation made under it).

[S. 55(3)/Ord. 13/10/w.e.f. 1/1/11.]

(3) The Commissioner may by notice require any employer, agent, contractor or other person within such time as may be specified in the notice, to make a return for any chargeable period containing-

(a) the names and addresses of all persons employed by that person for the whole or any part of that period; and

(b) the payments and allowances made to those persons in respect of that employment;

[S. 55(4)(a)/Ord. 13/10/w.e.f. 1/1/11.]

(ba) benefits provided to those persons in respect of that employment;

[S. 55(4)(b)/Ord. 13/10/w.e.f. 1/1/11.]

(c) the names and addresses of all persons with whom he has entered into a contract for the performance of any work, or for delivery of any produce or goods, in the course of that chargeable period, and the amount advanced or paid in respect of such contract either in cash or in goods or merchandise; and

(d) such other information as may be specified in the notice being information which is in the opinion of the Commissioner necessary for the purposes of this Ordinance.

(4) A return under subsection (3) above shall be made to the Commissioner and any person who fails to comply with a notice under that subsection shall be liable-

(a) if the person is not more than three months late in complying with the requirements of subsection (3), to a penalty of £100;

(b) in any other case, to a penalty of £200

(5) . . .

[S. 55(5)/Ord. 13/10/w.e.f. 1/1/11.]

(6) For the purposes of this section-

(a) in any case where an employer, agent, contractor or other person is a body of persons, the manager or other principal officer of the body shall be deemed to be the employer; and

(b) any director of a company, or person engaged in the management of a company, shall be deemed to be an employee of the company.

Miscellaneous provisions

204 Rules

(1) The Governor in Council may from time to time make rules generally for carrying out the provisions of this Ordinance, and rules made under this section may, in particular, make provision-

(a) any such matters as are authorized by this Ordinance to be prescribed otherwise than by the Commissioner;

(b) as to the apportionment of deductions or allowances under this Ordinance-

(i) where an individual becomes resident or ordinarily resident or ceases to be so resident in the Falkland Islands during the year preceding the year of assessment; or

(ii) where an individual's personal circumstances change during such year (for example, on marriage, death or separation from his spouse); or

(iii) where it otherwise appears that apportionment of deductions or allowances would be appropriate;

(c) for the method of calculating or estimating the deductions allowed or prescribed under sections 15, 58 and 97.

(1A) The Governor may make rules allowing any notice, form, return or other document to be delivered to and by the Commissioner by electronic means, and rules under this subsection may make different provision for different cases.

[S. 25/Ord. 23/02/w.e.f. 1/1/03.]

(2) Rules made under this section shall be published in the Gazette and shall come into operation on such publication or at such other time as may be named in such rules.

(3) If any person fails to comply with or contravenes the provisions of any rule made under this Ordinance he commits an offence.

(4) All rules made under this Ordinance shall be judicially noticed.

205 Time limit for making claims

Subject to any provision of this Ordinance prescribing a longer or a shorter period, a claim under this Ordinance shall not be allowed unless it is made within six years from the end of the chargeable period to which it relates.

206 Earned income and unearned income

(1) In this Ordinance references to earned income and to unearned income shall be construed in accordance with this section.

(2) In this Ordinance "earned income" means, in relation to any individual-

(a) any income arising in respect of any remuneration from any office or employment held by the individual, or in respect of any pension, superannuation or other allowance, deferred pay or compensation for loss of office or employment, given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment or given to the individual in respect of the past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance or deferred pay or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment held by the individual; and

(c) any income which is immediately derived by the individual from the carrying on or exercise by him of his business either as an individual or, in the case of a partnership, as a partner personally acting in the partnership; and

(d) any voluntary pension of an individual,

and for the purposes of this subsection "remuneration" includes any payment in respect of any holidays or leave accrued due, overtime, or terminal bonus or gratuity or any other payment made by an employer to an employee or former employee or for or on account of employment.

(2A) In this Ordinance, except section 83(2), "earned income" also includes, in relation to any individual-

(a) an amount equal to the value of any emolument received otherwise than in cash by that individual in respect of any office or employment held by the individual; and

(b) any amount in respect of which the individual is chargeable to tax by virtue of section 8(1)(c).

[S. 15(2)/Ord. 23/03/w.e.f. 1/1/04.]

(3) Any reference in this Ordinance to earned or unearned income does not include-

(a) any income in respect of which income tax is not payable by virtue of section 13; or

(b) any income which is exempt from income tax by virtue of section 57 or by virtue of any provision of the Taxes and Duties (Special Exemptions) Ordinance; or

(c) any income which is exempt from income tax by virtue of any arrangements having effect under section 165

(4) An annuity payable under approved personal pension arrangements (within the meaning of Part III) shall be treated as earned income of the annuitant.

(5) Subsection (4) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

(6) Any pension paid under any retirement benefit scheme which is approved or is being considered for approval under Part III shall, unless the Commissioner otherwise directs, be treated as earned income of the recipient.

(7) An allowance payable under Part 2 or Part 3 of the Members' Remuneration Ordinance 2009 is to be treated as earned income of the recipient.

[S. 22(2)/Ord. 2/11/w.e.f. 1/1/11 and Revision w.e.f. 31/07/2017.]

(8) . . .

[S. 22(3)/Ord. 2/11/w.e.f. 1/1/11.]

(9) Subject to subsection (3) above, for the purposes of this Ordinance, "unearned income" means any income which is not by virtue of subsections (2) to (8) above earned income and which is not, by virtue of any other provision of this Ordinance, to be treated as earned income.

(10) The provisions of this section are without prejudice to any other provision of this Ordinance directing income to be treated as earned income.

207 Subsidiaries

(1) For the purposes of this Ordinance a body corporate shall be deemed to be-

(a) a "51 per cent subsidiary" of another body corporate if and so long as more than 50 per cent of its ordinary share capital is owned directly or indirectly by that other body corporate;

(b) a "75 per cent subsidiary" of another body corporate if and so long as not less than 75 per cent of its ordinary share capital is owned directly or indirectly by that other body corporate;

(c) a "90 per cent subsidiary" of another body corporate if and so long as not less than 90 per cent of its ordinary share capital is owned directly by that other body corporate.

(2) In subsection (1) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section-

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series-

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last-owned body corporate.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner

shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where-

(a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or

(b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related,

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either-

(a) directly; or

(b) through an intermediary or intermediaries which is not a member or are not members of that series; or

(c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or

(d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists,

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

208 Connected persons

(1) For the purposes of this Ordinance, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor and with any -person who is connected with such an individual, and for the purposes of this subsection-

"settlement" includes any disposition, trust, covenant, agreement or arrangement; and

"settlor", in relation to a settlement, means any person by whom the settlement is made (whether directly or indirectly).

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the wife or husband or relative of any individual with whom he is in partnership.

(5) A company is connected with another company-

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section-

(a) "company" includes any body corporate or unincorporated association, but does not include a partnership;

(b) "relative" means brother, sister, ancestor or lineal descendant,

and section 210 shall apply for the purposes of this section.

209 Meaning of "control"

For the purposes of this Ordinance, except any provision which applies section 210, "control", in relation to a body corporate, means the power of a person to secure-

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

210 Alternative meaning of "control"

(1) For the purposes of any provision of this Ordinance which applies to this section, a person shall be taken to have control of a company if he -exercises, or is able to exercise or is entitled to

acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(2) Where two or more persons together satisfy any of the conditions of subsection (1) above, they shall be taken to have control of the company.

(3) For the purposes of subsection (1) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(4) For the purposes of subsections (1) and (2) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(5) For the purposes of subsections (1) and (2) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (4) above, but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

211 Meaning of "participator", "associate" and "creditor"

(1) For the purposes of section 210, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes-

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any loan creditor of the company;

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or -indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(2) For the purposes of section 210, "associate" means, in relation to a participator-

(a) any relative or partner of the participator;

(b) the trustee or trustees of any settlement in relation to which the -participator is, or any relative of his (living or dead) is or was, a settlor; and

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person-

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and

(ii) if the participator is a company, any other company interested in those shares or obligations,

and has a corresponding meaning in relation to a person other than a -participator.

(3) In subsection (2) above-

"relative" means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister; and

"settlement" and "settlor" have the same meanings as in section 208(3).

(4) Subject to subsection (6) below, for the purposes of this section and section 210, "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company-

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon),

or in respect of any redeemable loan capital issued by the company.

(5) Subject to subsection (6) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (4) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this section and section 210 as a loan creditor in respect of that debt or loan capital.

(6) A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

212 Errors, etc., in assessments and notices

(1) An assessment, warrant or other proceeding purporting to be made in accordance with this Ordinance shall not be quashed, or be declared void or voidable, for want of form, or be affected by reason of a mistake, defect or omission in it if it is in substance and effect in conformity with or according to the intent and meaning of this Ordinance, and if the person assessed or intended to be assessed or affected thereby is identified by the name by which he is usually or generally known.

(2) An assessment shall not be impeached or affected-

(a) by reason of a mistake therein as to-

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of tax charged; or

(b) by reason of any variance between the assessment and the notice of assessment,

unless the notice of assessment was not duly served on the person intended to be charged, or did not contain, in substance and effect, the particulars on which the assessment was made.

213 Service of notices

(1) Any notice given under this Ordinance by the Commissioner may be served on a person—

(a) by delivering it to the person in question;

(b) by sending it by post to the person's last known business or private address; or

(c) subject to subsection (3), by transmitting it electronically to an address provided by the person.

(2) A notice is deemed to be properly served if —

(a) it is addressed to the last known address of the person; or

(b) it is sent to the electronic address provided by the person.

(3) A person who does not wish or no longer wishes to receive notices electronically must notify the Commissioner accordingly, but any notice served prior to the Commissioner receiving the notification will be deemed to have been properly served.

[S. 10/Ord. 8/21/w.e.f. 30/9/21.]

214 Signature of notices

(1) Every notice to be given by the Commissioner under this Ordinance shall be signed by the Commissioner or by a person appointed or authorised by him for that purpose.

[S. 11/Ord. 8/21/w.e.f. 30/9/21.]

(2) …

[S. 11/Ord. 8/21/w.e.f. 30/9/21.]

(3) Any notice given by the Commissioner under this Ordinance is valid if the signature of the Commissioner or of a person appointed or authorised under subsection (1) appears on it either printed, in manuscript or as an electronic signature.

[S. 11/Ord. 8/21/w.e.f. 30/9/21.]

(4) A signature appearing on any notice and purporting to be the signature of any person so appointed or authorized shall be taken to be the signature of that person unless and until the contrary is shown.

(5) The production of any document under the hand of the Commissioner or of any person appointed by him purporting to be a copy of or extract from any return or assessment shall in the Tribunal, all courts and in all proceedings be sufficient evidence of the original, and the production of the original shall not be necessary; and all courts shall in all proceedings take judicial notice of the signature of the Commissioner and of any person appointed by him.

215 Repeals

The following enactments are hereby repealed-

(a) the Taxes Ordinance 1994;

(b) the Taxes (Amendment) Ordinance 1996;

(c) paragraph 4 of the Schedule to the Finance Ordinance 1996;

(d) the Taxes (Pensions Schemes) Ordinance 1996;

(e) the Taxes (Amendment) Ordinance 1997

SCHEDULE A1
TERRITORIES

[S. 12/Ord. 23/02/w.e.f. 1/1/03 and S. 11/Ord. 17/2019/w.e.f. 1/1/2019.]

A

Afghanistan	Algeria	Angola
Argentina	Armenia	Aruba
Australia	Austria	Azerbaijan

B

Bangladesh	Barbados	Belarus
Belgium	Belize	Benin
Bolivia	Botswana	Brazil
Brunei	Burundi	

C

Cameroon	Canada	China
Colombia	Croatia	Cuba
Czech Republic		

D

Democratic Republic of the Congo	Denmark	Dominican Republic

E

Ecuador	Egypt	El Salvador

F

Faroe Islands	Fiji	Finland
France		

G

Gabon	Gambia	Germany
Ghana	Greece	Guyana

H

Honduras

I

Iceland	India	Indonesia
Iran	Israel	Italy
Ivory Coast		

J

Jamaica	Japan

K
Kenya

L
Lesotho
Libya
Luxembourg

M
Malawi
Malaysia
Malta
Mexico
Monaco
Morocco

N
Namibia
Netherlands
New Zealand
Nigeria
Norway

P
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Puerto Rico

R
Republic of Korea
Russia

S
Saudi Arabia
Senegal
Sierra Leone
Slovakia
Slovenia
Solomon Islands
South Africa
Spain
Sri Lanka
Swaziland
Sweden

T
Tanzania
Thailand
Trinidad and Tobago
Tunisia
Turkey

U
Uganda
Ukraine
United Kingdom
United States of America
Uruguay

V
Venezuela
Vietnam

Z
Zambia
Zimbabwe

[S. 24/Ord. 16/13/w.e.f. 1/1/14 and S. 11/Ord. 17/2019/w.e.f. 1/1/2019.]

SCHEDULE 1
EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION

1. (1) For the purposes of this Ordinance, an equity holder of a company is any person who-

(a) holds ordinary shares in the company; or

(b) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

and any reference to profits or assets available for distribution to a company's equity holders does not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(2) For the purposes of sub-paragraph (1)(a) above "ordinary shares" means all shares other than fixed-rate preference shares.

(3) In this Schedule "fixed-rate preference shares" means shares which-

(a) are issued for consideration which is or includes new consideration; and

(b) do not carry any right either to conversion into shares or securities of any other description except-

(i) shares to which sub-paragraph (6) below applies;

(ii) securities to which sub-paragraph (7) below applies;

(iii) shares or securities in the company's parent company,

or to the acquisition of any additional shares or securities; and

(c) do not carry any right to dividends other than dividends which-

(i) are of a fixed amount or at a fixed rate per cent of the nominal value of the shares; and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares; and

(d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares listed in the Official List of the Stock Exchange in the United Kingdom.

(4) For the purposes of sub-paragraph (1)(b) above "loan creditor" in relation to a company means a creditor in respect of any debt incurred by the company-

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon),

or in respect of any redeemable loan capital issued by the company.

(5) In sub-paragraph (1)(b) above "normal commercial loan" means a loan of or including new consideration and-

(a) which does not carry any right either to conversion into shares or securities of any other description except-

(i) shares to which sub-paragraph (6) below applies;

(ii) securities to which sub-paragraph (7) below applies; or

(iii) shares or securities in the company's parent company,

or to the acquisition of any additional shares or securities; and

(b) which does not entitle the loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration lent; and

(c) in respect of which the loan creditor is entitled, on repayment, to an amount which either does not exceed the new consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities listed in the Official List of the Stock Exchange in the United Kingdom.

(6) This sub-paragraph applies to any shares which-

(a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above; and

(b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the -company's parent company, or to the acquisition of any additional shares or securities.

(7) This sub-paragraph applies to any securities representing a loan of or including new consideration and-

(a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above; and

(b) which does not carry any such rights as are mentioned in subparagraph (6)(b) above.

(8) For the purposes of sub-paragraphs (3) and (5) to (7) above a -company ("the parent company") is the parent company of another company if-

(a) in a case where the matter is relevant to section 38 or 50, the other company is a 51 per cent subsidiary of the parent company; or

(b) in a case where the matter is relevant to section 139 by virtue of subsection (6) of that section, that other company is a 51 per cent, 75 per cent or (as the case may be) 90 per cent subsidiary of the parent company; or

[S. 9(7)/Ord. 6/06/w.e.f. 1/3/06.]

(c) in a case where the matter is relevant to section 139 by virtue of subsection (7) of that section, the parent company and a third company each directly and beneficially owns 50 per cent of the ordinary share capital in the other company.

(9) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest-

(a) shall not be treated as depending to any extent on the results of the company's business or any part of it by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the results of the company's business or any part of it improving; and

(b) shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the value of any of the company's assets increasing.

2. (1) Sub-paragraph (3) below applies where-

(a) a person makes a loan to a company on the basis mentioned in sub-paragraph (2) below for the purpose of facilitating the acquisition of land; and

(b) none of the land which the loan is used to acquire is acquired with a view to resale at a profit.

(2) The basis referred to above is that-

(a) the whole of the loan is to be applied in the acquisition of land by the company or in meeting the incidental costs of obtaining the loan;

(b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land which the loan is to be used to acquire; and

(c) no other security is to be required for the payment of any such amount.

(3) For the purposes of paragraph 1(5)(b) above, the amount to which the loan creditor is entitled by way of interest shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land which the loan is used to acquire.

(4) In sub-paragraph (2)(a) above the reference to the incidental costs of obtaining the loan is to any expenditure on fees, commissions, advertising, printing or other incidental matters wholly and exclusively incurred for the purpose of obtaining the loan or of providing security for it.

(5) Notwithstanding anything in paragraph 1 above but subject to sub-paragraph (6) below, where-

(a) any person has, directly or indirectly, provided new consideration for any shares or securities in the company; and

(b) that person, or any person connected with him, uses for the purposes of his business assets which belong to the company and in respect of which there is made to the company-

(i) an allowance under Chapter II of Part V in respect of expenditure incurred by the company on the provision of machinery or plant;

(ii) an allowance under section 107 in respect of expenditure incurred by the company on scientific research,

then, for the purposes of this Schedule, that person, and no other, shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(6) In any case where sub-paragraph (5) above applies in relation to a bank in such circumstances that-

(a) the only new consideration provided by the bank as mentioned in paragraph (a) of that sub-paragraph is provided in the normal course of its banking business by way of a normal commercial loan as defined in paragraph 1(5) above; and

(b) the cost to the company concerned of assets falling within paragraph (b) of that sub-paragraph which are used as mentioned in that paragraph by the bank or a person connected with the bank is less than the amount of that new consideration,

references in sub-paragraph (5) above, other than the reference in paragraph (a), to shares or securities in the company shall be construed as references to so much only of the loan referred to paragraph (a) above as is equal to the cost referred to in paragraph (b) above.

3. (1) In this Ordinance "new consideration" means, subject to sub-paragraphs (2) and (3) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution.

(2) Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital.

(3) Subject to sub-paragraph (4) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this paragraph as new consideration received by the company unless the consideration consists of-

(a) money or value received from the company as a distribution;

(b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or

(c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

(4) No amount shall be regarded as new consideration by virtue of subsection (3)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a distribution on issue, the nominal value of that share capital.

4. (1) Subject to the following provisions of this Schedule, for the purposes of section 38(10), 50(8) or 139(6) and (7) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company means the percentage to which the first company would be so entitled in the relevant accounting period on a distribution in money to those equity holders of-

(a) an amount of profits equal to the total profits of the other company which arise in that accounting period (whether or not any of those profits are in fact distributed); or

(b) if there are no profits of the other company in that accounting period, profits of £100,

and in the following provisions of this Schedule that distribution is referred to as "the profit distribution".

(2) For the purposes of the profit distribution, it shall be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(3) Subject to sub-paragraph (2) above, where an equity holder is entitled as such to a payment of any description which, apart from this sub-paragraph, would not be treated as a distribution, it shall nevertheless be treated as an amount to which he is entitled on the profit distribution.

5. (1) Subject to the following provisions of this Schedule, for the purposes of section 38(10), 50(8) or 139(6) and (7) the percentage to which one company would be beneficially entitled of any assets of another company available for distribution to its equity holders on a winding-up means the percentage to which the first company would be so entitled if the other company were to be wound up and on that winding-up the value of the assets available for distribution to its equity holders (that is to say, after deducting any liabilities to other persons) were equal to-

(a) the excess, if any, of the total amount of the assets of the company, as shown in the balance sheet relating to its affairs as at the end of the relevant accounting period, over the total amount of those of its liabilities as so shown which are not liabilities to equity holders as such; or

(b) if there is no such excess or if the company's balance sheet is prepared to a date other than the end of the relevant accounting period, £100

(2) In the following provisions of this Schedule a winding-up on the basis specified in sub-paragraph (1) above is referred to as "the notional winding-up".

(3) If, on the notional winding-up, an equity holder would be entitled as such to an amount of assets of any description which, apart from this sub-paragraph, would not be treated as a distribution of assets, it shall nevertheless be treated, subject to sub-paragraph (4) below, as an amount to which the equity holder is entitled on the distribution of assets on the notional winding-up.

(4) If an amount ("the returned amount") which corresponds to the whole or any part of the new consideration provided by an equity holder of a company for any shares or securities in respect of which he is an equity holder is applied by the company, directly or indirectly, in the making of a loan to, or in the acquisition of any shares or securities in, the equity holder or any person connected with him, then, for the purposes of this Schedule-

(a) the total amount referred to in sub-paragraph (l)(a) above shall be taken to be reduced by a sum equal to the returned amount; and

(b) the amount of assets to which the equity holder is beneficially -entitled on the notional winding-up shall be taken to be reduced by a sum equal to the returned amount.

6. (1) This paragraph applies if any of the equity holders-

(a) to whom the profit distribution is made; or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are wholly or partly limited by reference to a specified amount or amounts (whether the limitation takes the form of the capital by reference to which a distribution is calculated or operates by reference to an amount of profits or otherwise).

(2) Where this paragraph applies there shall be determined-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be -entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be -entitled,

if, to the extent that they are limited as mentioned in sub-paragraph (1) above, the rights of every equity holder falling within that sub-paragraph (including the first company concerned if it is such an equity holder) had been waived.

(3) If, on the profit distribution, the percentage of profits determined as mentioned in sub-paragraph (2)(a) above is less than the percentage of profits determined under paragraph 4(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of -section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) If, on the notional winding-up, the percentage of assets determined as mentioned in sub-paragraph (2)(b) above is less than the percentage of assets determined under paragraph 5(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

7. (1) This paragraph applies if, at any time in the relevant accounting period, any of the equity holders-

(a) to whom the profit distribution is made; or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are of such a nature, (as, for example, if any shares will cease to carry a right to a dividend at a future time) that if the profit distribution or the notional winding-up were to take place in a different accounting period the percentage to which, in accordance with paragraphs 1 to 6 above, that equity holder would be entitled of profits on the profit distribution or of assets on the notional winding-up would be different from the percentage determined in the relevant accounting period.

(2) Where this paragraph applies, there shall be determined-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

if the rights of the equity holders in the relevant accounting period were the same as they would be in the different accounting period referred to in sub-paragraph (1) above.

(3) If in the relevant accounting period an equity holder holds, as such, any shares or securities in respect of which arrangements exist by virtue of which, in that or any subsequent accounting period, the equity holder's entitlement to profits on the profit distribution or to assets on the notional winding-up could be different as compared with his entitlement if effect were not given to the arrangements, then for the purposes of this paragraph-

(a) it shall be assumed that effect would be given to those arrangements in a later accounting period; and

(b) those shares or securities shall be treated as though any variation in the equity holder's entitlement to profits or assets resulting from giving effect to the arrangements were the result of the operation of such rights attaching to the share or securities as are referred to in sub-paragraph (1) above.

In this sub-paragraph "arrangements" means arrangements of any kind whether in writing or not.

(4) Paragraph 6(3) and (4) above shall apply for the purposes of this paragraph with the substitution for any reference to paragraph 6(2)(a) or (2)(b) of a reference to sub-paragraph (2)(a) or (2)(b) above (as the case may require).

8. (1) In a case where paragraphs 6 and 7 above apply, each of the following percentages, namely-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled-,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are-

(a) the basis specified in paragraph 6(2) above;

(b) the basis specified in paragraph 7(2) above;

(c) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above taken together;

(d) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 6(2) and 7(2) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

9. (1) This paragraph applies if, at any time in the relevant accounting period, option arrangements exist; and option arrangements are arrangements of any kind (whether in writing or not) as regards which the two conditions set out below are fulfilled.

(2) The first condition is that the arrangements are ones by virtue of which there could be a variation in-

(a) the percentage of profits to which any of the equity holders is entitled on the profit distribution; or

(b) the percentage of assets to which any of the equity holders is entitled on the notional winding-up.

(3) The second condition is that, under the arrangements, the variation could result from the exercise of any of the following rights (option rights)-

(a) a right to acquire shares or securities in the second company referred to in paragraphs 4(1) and 5(1) above;

(b) a right to require a person to acquire shares or securities in that company.

(4) For the purposes of sub-paragraph (3) above-

(a) it is immaterial whether or not the shares or securities were issued before the arrangements came into existence;

(b) "shares" does not include fixed-rate preference shares;

(c) "securities" does not include normal commercial loans (within the meaning given by paragraph 1(5) above).

(5) As regards each point in time when option arrangements exist in the relevant accounting period-

(a) there shall be taken each possible state of affairs that could then subsist if the outstanding option rights, or any of them or any combination of them, became effective at that point; and

(b) taking each such state of affairs, it shall be assumed that the rights and duties of the equity holders in the relevant accounting period were to be found accordingly.

(6) The following rules shall have effect-

(a) for the purposes of sub-paragraph (5) above outstanding option rights are all such option rights under the arrangements (or sets of arrangements if more than one) as exist at the point in time concerned but have not become effective at or before that point;

(b) for the purpose of applying sub-paragraph (5) above it is immaterial whether or not the rights are exercisable at or before the point in time concerned and it is immaterial whether or not they are capable of becoming effective at or before that point;

(c) for the purposes of sub-paragraph (5) above and this sub-paragraph an option right becomes effective when the shares or securities to which it relates are acquired in pursuance of it.

(7) The determination mentioned in sub-paragraph (8) below shall be made as regards each point in time when option arrangements exist in the relevant accounting period; and for each such point in time a separate determination shall be made for each of the possible states of affairs mentioned in sub-paragraph (5) above.

(8) The determination is a determination of-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

if the rights and duties of the equity holders in the relevant accounting period were found as mentioned in sub-paragraph (5) above.

(9) Where different determinations yield different percentages of profits and different percentages of assets, only one determination of each percentage (yielding the lowest figure) shall be treated as having been made.

(10) Paragraph 6(3) and (4) above shall apply for the purposes of this paragraph with the substitution for references to paragraph 6(2)(a) and (2)(b) of references to sub-paragraphs (8)(a) and (8)(b) above.

10. (1) In a case where paragraphs 6 and 9 above apply, each of the -following percentages, namely-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be -entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled-,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are-

(a) the basis specified in paragraph 6(2) above;

(b) the basis specified in paragraph 9(8) above;

(c) the basis specified in paragraph 6(2) above and the basis specified in paragraph 9(8) above taken together;

(d) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 6(2) and 9(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit

distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

11. (1) In a case where paragraphs 7 and 9 above apply, each of the following percentages, namely-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are-

(a) the basis specified in paragraph 7(2) above;

(b) the basis specified in paragraph 9(8) above;

(c) the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above taken together;

(d) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 7(2) and 9(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

12. (1) In a case where paragraphs 6 and 7 and 9 above apply, each of the following percentages, namely-

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be -entitled; and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 5(1) above would be entitled-,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are-

(a) the basis specified in paragraph 6(2) above;

(b) the basis specified in paragraph 7(2) above;

(c) the basis specified in paragraph 9(8) above;

(d) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above taken together;

(e) the basis specified in paragraph 6(2) above and the basis specified in paragraph 9(8) above taken together;

(f) the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above taken together;

(g) the basis specified in paragraph 6(2) above and the basis specified in paragraph 7(2) above and the basis specified in paragraph 9(8) above all taken together;

(h) the basis specified in paragraph 4(1) or 5(1) above (according to the percentage concerned) without regard to paragraphs 6(2), 7(2) and 9(8) above.

(3) The lowest of the eight percentages of profits so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 4(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the eight percentages of assets so determined shall be taken for the purposes of section 38(10), 50(8) or 139(6) and (7) to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 5(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 9(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 9(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 9(9) above.

13. For the purposes of section 38(10), 50(8) or 139(6) and (7) and paragraphs 4 to 12 above-

(a) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company; and

(b) the percentage to which one company would be beneficially entitled of any assets of another company on a winding-up,

means the percentage to which the first company is, or would be, so entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

SCHEDULE 1A
EXEMPTION AND RELIEF FROM CHARGE UNDER SECTION 100A

[S. 5(2)/Ord. 6/08/effective in relation to any disposal or acquisition of shares on or after 1/6/08.]

PART 1
GENERAL PROVISIONS

1 Purpose and interpretation

(1) This Schedule has effect for the purpose of supplementing the provisions of section 100A.

(2) In this Schedule "relevant shares" means shares within section 100A.

(3) Expressions used in this Schedule and in section 100A shall have the same meaning in this Schedule as they have in that section.

PART 2
EXEMPT TRANSACTIONS

2 Small disposals limitation

Paragraph 3 applies where a person ("the seller") disposes at any time in a year of assessment of any relevant shares in a company to another person ("the buyer") and the aggregate market value of all relevant shares in that company which are disposed of by the seller and any person connected with the seller during that year, does not exceed £100,000.

3 The exemption

Where this paragraph applies in relation to a disposal, then-

(a) section 100A shall not apply in relation to the disposal, and

(b) as respects any later application of and for all purposes of this Ordinance, the costs incurred by the buyer in the acquisition of the shares shall be deemed to be equal to the acquisition costs of the seller or to the buyer's actual acquisition costs, whichever is the greater.

4 Small shareholdings limitation

Paragraph 3 does not apply where, immediately before the disposal of relevant shares in a company, the aggregate market value of all relevant shares in that company which are held by the seller and any person connected with the seller exceeded £100,000.

PART 3
RETIREMENT RELIEF

5 Interpretation

(1) In this Part of this Schedule-

"the buyer" in relation to a disposal of shares means the person acquiring the shares;

"company" means a company which is a trading company or a member of a trading group;

"disposal shares" in relation to a disposal of shares in a company means those shares;

"full-time working director or employee", in relation to one or more companies, means an individual who is either-

(a) director who is required to devote substantially the whole of his time to the service of that company or, as the case may be, those companies taken together, in a managerial or technical capacity; or

(b) an employee whose employment with that company or, as the case may be, those companies taken together, is his full-time occupation;

"personal company", in relation to an individual, means a company the voting rights in which are, as to not less than 5 per cent., exercisable unconditionally by the individual otherwise than as trustee or nominee;

"qualifying period" has the meaning given by sub-paragraph (3);

"relevant company", in relation to a disposal of shares in a company, means that company;

"the seller", in relation to a disposal of shares, means the person making the disposal;

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

"trading group" means a group of companies the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades.

(2) For the purposes of this Part of this Schedule, an individual shall be taken to have retired on grounds of ill-health or disablement if-

(a) the individual becomes so ill or disabled as to be permanently unable to work, and

(b) the Chief Medical Officer has certified that the individual is permanently so ill or disabled;

and in this sub-paragraph "work" includes any kind of paid employment, whether as an employee or as a self-employed person or as an office-holder.

(3) In this Part of this Schedule, "qualifying period", in relation to a disposal of shares in a company, means a period of ten years ending with-

(a) the date of the disposal, or

(b) subject to sub-paragraph (4), the date on which the company ceased to be a trading company without continuing to be or becoming a member of a trading group or ceased to a be a member of a trading group without continuing to be or becoming a trading company.

(4) Sub-paragraph (3)(b) does not apply unless-

(a) on or before the day mentioned in that provision the individual disposing of the shares had reached 55 years of age or if younger had retired on the grounds of ill-health or disablement, and

(b) the cessation mentioned in that provision occurred within a period of one year ending with the date of the disposal or such longer period as the Commissioner may, in any particular case, by notice allow.

6 The relief

(1) Where there is a disposal of relevant shares in a company then, on a claim being made in that behalf by the seller in relation to that disposal ("the current disposal") before the end of the period of 2 years immediately following the year in which the seller disposed of the shares and subject to the provisions of this Part of this Schedule-

(a) if the consideration for that disposal does not exceed £500,000, section 100A shall not apply in relation to the disposal;

(b) if the consideration for that disposal exceeds £500,000, then for the purposes of section 100A the consideration for the disposal shall, as respects the seller, be deemed to be equal to the amount of that excess.

(2) Where at any time the seller has disposed of other shares in any company before the current disposal, in circumstances such that sub-paragraph (1) applies to that disposal of other shares, the amounts of £500,000 mentioned in that sub-paragraph shall each be reduced-

(a) by the amount of the consideration for the disposal of the other shares, or

(b) if there is more than one such other disposal, by the aggregate amount of the consideration for all those other disposals.

(3) Any calculation carried out for the purposes of this paragraph shall be carried out before any apportionment is made in pursuance of section 142.

(4) Where in relation to a disposal of shares-

(a) a loss is deemed to accrue to the seller by virtue of section 100A, and

[S. 25(a)/Ord. 16/13/w.e.f. 1/1/14.]

(b) the whole or part of that loss would not have been deemed to accrue if this paragraph had not applied in relation to the disposal,

the amount of so much of that loss as falls within paragraph (b) shall be deemed to be zero.

7 Conditions for relief

(1) Subject to the following provisions of this paragraph, relief under paragraph 6 shall not be available unless the following continuing conditions are satisfied-

(a) that the relevant company has been the seller's personal company throughout the qualifying period;

(b) that the seller has been a full-time working director or employee of the relevant company throughout the qualifying period;

(c) that the disposal shares have carried an unconditional right to vote in a general meeting of the relevant company throughout the qualifying period.

(2) Subject to the following provisions of this paragraph, the following conditions must also be satisfied-

(a) that at the time of the disposal the seller has reached 55 years of age or, if younger, has retired on the grounds of ill-health or disablement;

(b) that, if immediately after the disposal the seller retains shares in the relevant company, those retained shares do not amount in number to more than 5 per cent. of the total shares the seller held immediately before the disposal;

(3) Where-

(a) the continuing conditions are not satisfied for the whole of the qualifying period, but

(b) those conditions are satisfied for-

(i) at least the year immediately preceding the date of the disposal, or

(ii) if the seller had retired on grounds of ill-health or disablement before the disposal and the Commissioner gives notice to the seller that in the opinion of the Commissioner it is reasonable, taking account of all relevant circumstances, to disregard the period from retirement to disposal, at least the year immediately preceding the date of the retirement,

then the consideration which apart from this paragraph would be eligible for relief under paragraph 6(1)(a) or (b) shall be reduced by 10 per cent for each year or part of a year during the qualifying period in which the continuing conditions have not been satisfied.

(4) Where sub-paragraph (3) applies and paragraph 13 of Schedule 2 also applies, paragraph 13 shall be applied after any computation required by sub-paragraph (3) has been carried out.

(5) Paragraph 4 of Schedule 2 shall not apply in relation to the disposal or acquisition of any shares so far as the shares or the consideration for the disposal fall within paragraph 6(1) (after the application of all provisions of this Part).

(6) Section 144 shall not apply for the computation of the acquisition costs of the buyer.

8 Relief for spouses

(1) Sub-paragraph (3) applies where relevant shares had been transferred to the seller and either?

(a) the transfer was under the will or intestacy of a person ("the transferor") who at the time of death was the spouse of, and living with, the seller, or

(b) at the time of the transfer the person making the transfer ("the transferor") was the spouse of and living with the transferee, and had retired on grounds of ill-health or disablement.

(2) Sub-paragraph (3) does not apply unless the seller makes an election in accordance with sub-paragraph (5) for relief under this paragraph.

(3) Where this sub-paragraph applies, any continuous period ending at the time of the transfer to the seller during which-

(a) the transferor (otherwise than as trustee or nominee) owned the shares, and

(b) the relevant company had been the transferor's personal company, and

(c) the shares carried an unconditional right to vote in a general meeting of the company, and

(d) the transferor had been a full-time working director or employee of the company,

shall for all purposes of this Part of this Schedule be deemed to be a period during which the shares were owned by the seller.

(4) Where sub-paragraph (3) applies, any period of time during which the shares were held by the transferor's personal representatives shall be deemed to be a period of ownership by the seller.

(5) An election made for the purposes of this paragraph must-

(a) be signed by both spouses, except in the case of a transfer under a will or intestacy;

(b) clearly identify both spouses and all relevant matters relating to the shares, the company and the transferor;

(c) contain such other information as the Commissioner may require;

(d) be made by notice to the Commissioner not more than 2 years after the end of the year in which the transfer takes place.

(6) An election under this paragraph shall be irrevocable.

(7) All adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

PART 4
GIFT RELIEF

9 Section 100A not to apply in certain cases

(1) Subject to the following provisions of this Part, where-

(a) an individual ("the donor") disposes of any relevant shares in a company ("the relevant company") to another individual ("the beneficiary"), and

(b) disregarding section 144, there is no consideration for the disposal of any relevant shares,

section 100A shall not apply to the disposal.

(2) This sub-paragraph applies where-

(a) an individual ("the donor") disposes of any relevant shares in a company ("the relevant company") to another individual ("the beneficiary"), and

(b) the consideration for the disposal, disregarding section 144 and Part 3 of this Schedule, is less than the market value of the shares, and

(c) in relation to that disposal, an amount is deemed to be income of the donor by virtue of section 100A (disregarding the following provisions of this Schedule but after the application of Part 3 in a case falling within paragraph 10(2)).

(3) Where sub-paragraph (2) applies, then, subject to the following provisions of this Schedule, section 100A shall not apply in relation to so much of the amount mentioned in sub-paragraph (2)(c) as is equal to-

$$\left(1-\frac{A}{B}\right)E$$

where in relation to the disposal in question,

A is the actual consideration received by the donor,

B is the market value of the shares mentioned in sub-paragraph (2)(b), and

E is the amount mentioned in sub-paragraph (2)(c).

(4) For the purposes of any later application of section 100A or this Schedule to a disposal by the beneficiary of shares acquired in a case falling within sub-paragraph (1), the costs incurred by the beneficiary in the acquisition of those shares shall be deemed to be equal to the donor's actual acquisition costs (if any).

(5) For the purposes of any later application of section 100A or this Schedule to a disposal by the beneficiary of shares acquired in a case falling within sub-paragraph (2), the costs incurred by the beneficiary in the acquisition of those shares shall be deemed to be equal to-

(a) if sub-paragraph (b) does not apply, an amount equal to-

$$C+\left(1-\frac{C}{B}\right)D$$

where in relation to that acquisition-

C is the actual consideration given by the beneficiary to the donor,

B is the market value of the shares mentioned in sub-paragraph (2)(b), and

D is the original cost of the shares to the donor; or

(b) if the donor also claimed retirement relief before electing for relief under this paragraph and paragraph 6(4) applied in relation to the claim for retirement relief, an amount equal to the actual consideration given by the beneficiary to the donor.

10 Elections for relief

(1) Paragraph 9 does not apply unless the donor and the beneficiary jointly elect that it shall apply to the disposal. All adjustments shall be made, whether by way of repayment of tax or otherwise, as may be necessary to give effect to any such election.

(2) An election made under this paragraph for relief under paragraph 9(2) relating to a disposal of shares in relation to which relief is also available under Part 3 of this Schedule, or would be so available if a claim under that Part were made in relation to the disposal, shall be of no effect unless the claim in respect of the disposal has been made under that Part before the election is made.

(3) An election under this paragraph-

(a) shall clearly identify the donor and the beneficiary and the shares which are the subject matter of the disposal and the consideration (if any) for the disposal;

(b) shall contain such other information as the Commissioner may require;

(c) shall be made by notice to the Commissioner not more than 2 years after the end of the year in which the disposal is made; and

(d) shall be irrevocable.

(4) If any amount of tax-

(a) due and payable from the beneficiary, and

(b) attributable to a subsequent disposal (including deemed disposal) of the relevant shares,

remains outstanding for more than 6 months, the donor may be assessed for that amount of tax not later than 2 years after the end of the year in which the tax first became due and payable from the beneficiary.

(5) Tax charged by an assessment under sub-paragraph (4) on a donor shall carry interest from the date the tax became due and payable by the beneficiary, and all the provisions of this Ordinance relating to notices of assessment, appeals and other proceedings under this Ordinance shall apply to any assessment under this paragraph and to the tax charged by the assessment.

(6) A person who is assessed to tax under sub-paragraph (4) and pays an amount by way of tax or interest, or both, shall be entitled to recover that amount from the beneficiary.

[S. 25(b)/Ord. 16/13/w.e.f. 1/1/14.]

(7) Where, at any time before the end of 6 years from the end of the year of assessment in which the beneficiary acquired the shares as mentioned in paragraph 9, the beneficiary ceases to be ordinarily resident in the Falkland Islands before disposing of the shares in question (disregarding any deemed disposal under this sub-paragraph), then the beneficiary shall be

deemed to have disposed of the shares to a willing purchaser for a consideration equal to the market value of the shares at that time.

SCHEDULE 2
TAXATION OF CHARGEABLE GAINS: SUPPLEMENTARY PROVISIONS

PART
GENERAL

Deductions permitted from consideration

1. (1) There shall be deducted from the consideration for a disposal of assets taken into account in the computation of the gain any money or money-'s worth charged to tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of this Ordinance other than any money or money's worth which is-

(a) taken into account in the making of a balancing charge under Chapter II of Part V of this Ordinance; or

(b) brought into account as the disposal value of any machinery or plant under that Chapter.

(2) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to-

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

(b) any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,

(c) the incidental costs to him of making the disposal.

(3) For the purposes of this paragraph and for the purposes of all other provisions of this Ordinance, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance together with-

(a) costs of advertising to find a seller or a buyer; and

(b) costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Ordinance.

(4) In any case where-

(a) the disposal is of a petroleum licence; and

(b) the person making the disposal has incurred (or is deemed to have incurred) expenditure on searching for petroleum in the licensed area, ascertaining the characteristics of any petroleum-bearing area in that area or ascertaining what are the petroleum reserves of any such petroleum-bearing area; and

(c) an allowance under Chapter II of Part V has not been made in respect of that expenditure,

then an amount equal to the amount of that expenditure, less any amount within sub-paragraph (5) below, may be deducted in the computation of the gain.

(5) In the case of a disposal of a petroleum licence, there shall be deducted from the amount of any expenditure within sub-paragraph (4)(b) above any amount which the buyer is deemed to have incurred by virtue of section 111(4) to (6).

(6) Subject to Part VIII, the tax chargeable under the law of any country outside the Falkland Islands on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation of the gain.

(7) Any provision in this Ordinance introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

Exclusion of expenditure by reference to tax on income

2. The following sums shall not be allowable as a deduction in the computation of the gain (however the deduction is or would be made)-

(a) any expenditure allowable as a deduction in computing the profits or gains or losses of a business, or allowable as a deduction in computing any other income or profits or gains or losses, for the purposes of this Ordinance;

(b) any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains;

(c) without prejudice to paragraph (a) or (b) above, any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

Part disposals and options

3. (1) For the purposes of this Chapter-

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

(b) subject to sub-paragraphs (2) to (4) below, there is a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

(2) The grant of an option, and in particular-

(a) the grant of an option in a case where the grantor binds himself to sell what he does not own, and because the option is abandoned, never has occasion to own; and

(b) the grant of an option in a case where the grantor binds himself to buy what, because the option is abandoned, he does not acquire,

is the disposal of an asset, namely, the option, but subject to sub-paragraphs (3) and (4) as to treating the grant of an option as part of a larger transaction.

(3) If an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of his obligations under the option shall be treated as a single transaction and accordingly-

(a) if the option binds the grantor to sell, the consideration for the option is part of the consideration for the sale; and

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

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

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

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

(5) Where there is a part disposal of an asset, the sums which are attributable to the asset under paragraph 1(2)(a) and (b) above shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of, be apportioned by reference to-

(a) the amount or value of the consideration for the disposal on the one hand (call that amount or value A); and

(b) the market value of the property which remains undisposed of on the other hand (call that market value B);

and, accordingly the fraction of those sums so allowable as a deduction shall be-

$$\frac{A}{A + B}$$

and the remainder of the sums which would have been so allowable shall be attributed to the property which remains undisposed of.

(6) This paragraph shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.

(7) It is hereby declared that this paragraph and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to, paragraph 18 below or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

Transactions between connected persons

4. (1) This paragraph shall apply where a person acquires an asset and the person making the disposal is connected with him.

(2) Without prejudice to the generality of section 144(1), the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.

(3) Subject to sub-paragraph (4) below, if on the disposal a loss accrues to the person making the disposal, it shall not be deductible except from a chargeable gain accruing to him on some other disposal of an asset to the person acquiring the asset mentioned in sub-paragraph (1) above, being a disposal made at a time when they are connected persons.

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

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

(6) Subject to sub-paragraph (7) below, in a case where the asset mentioned in sub-paragraph (1) above is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (where the amount of the consideration for the acquisition is, in accordance with sub-paragraph (2) above, deemed to be equal to the market value of the asset) that market value shall be an amount equal to the amount (if any) by which A exceeds B, where-

A is equal to what the market value of the asset would be if not subject to the right or restriction, and

B is equal to the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less.

(7) If the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or is an option or other right to acquire the asset or is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, the market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

(8) Sub-paragraphs (6) and (7) above shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

Consideration due after time of disposal

5. (1) In the computation of the gain consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the Commissioner to be irrecoverable, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

Deemed consideration in certain cases where assets disposed of in a series of transactions

6. (1) For the purposes of this Chapter, in any case where-

(a) by way of two or more material transactions which are linked (a series of linked transactions), one person disposes of assets to another person with whom he is connected or to two or more other persons with each of whom he is connected; and

(b) the original market value of the assets disposed of by any of the transactions in the series, as determined under paragraph 7 is less than the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series, as so determined,

then, subject to sub-paragraph (2) below, the disposal effected by any linked transaction in the series in respect of which the condition in paragraph (b) above is fulfilled shall be deemed to be for a consideration equal to the appropriate portion referred to in that paragraph.

(2) Where the disposal effected by a material transaction is one to which paragraph 18 below applies, nothing in sub-paragraph (1) above shall affect the amount which, for the purposes of this Chapter, is the consideration for that disposal.

(3) Subject to sub-paragraph (5) below, any reference in this paragraph to a material transaction is a reference to a transaction which takes place on or after 1st January 1996; and, for the purposes of this paragraph, two or more material transactions are linked if they occur within the period of six years ending on the date of the last of them.

(4) This paragraph shall apply or, as the case may be, shall again apply-

(a) when a second material transaction causes a series of linked transactions to come into being; and

(b) whenever, on the occurrence of a further material transaction, an existing series is extended by the inclusion of that transaction (whether or not an earlier transaction ceases to form part of the series),

and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to this paragraph on each such occasion.

(5) Where a member of a group of companies disposes of an asset to another member of the group in circumstances such that, by virtue of section 148, both companies are treated, so far as relates to corporation tax on chargeable gains, as if the consideration for the disposal were of such an amount as would secure that neither a gain nor a loss would accrue, the transaction by which that disposal is effected is not a material transaction; and a disposal in these circumstances is in this paragraph referred to as an "inter-group transfer".

(6) In any case where-

(a) a company ("company A") disposes of an asset by way of a material transaction; and

(b) company A acquired the asset after 1st January 1996 by way of an inter-group transfer; and

(c) the disposal by company A is to a person who is connected with another company ("company B") which at some time after that date disposed of the asset by way of an inter-group transfer; and

(d) either the disposal by way of inter-group transfer which is referred to in paragraph (c) above was the occasion of the acquisition referred to in paragraph (b) above or, between that disposal and that acquisition, there has been no disposal of the asset which was not an inter-group transfer,

then, for the purpose of determining whether sub-paragraph (1) above applies in relation to a series of linked transactions, the disposal by company A shall be treated as having been made by company B; but any increase in the consideration for that disposal resulting from the application of sub-paragraph (1) above shall have effect with respect to company A.

Original market value and aggregate market value for purposes of paragraph 6

7. (1) This paragraph has effect for determining the original market value of assets and the aggregate market value of assets as mentioned in paragraph 6(1)(b), and expressions used in this paragraph have the same meaning as in that paragraph.

(2) Where there is a series of linked transactions, the original market value of the assets disposed of by each transaction in the series shall be determined as follows-

(a) if at the time in question the transaction is the most recent in the series, the original market value of the assets disposed of by that transaction is the market value which,

apart from paragraph 6, would be deemed to be the consideration for that transaction for the purposes of this Chapter; and

(b) in the case of any other transaction in the series, the original market value of the assets disposed of by that transaction is the value which, prior to the occurrence of the most recent transaction in the series, was or would have been deemed for the purposes of this Chapter to be the consideration for the transaction concerned (whether by virtue of the previous operation of paragraph 6 above, or by virtue of any other provision of this Ordinance).

(3) Subject to sub-paragraphs (6) to (9) below, in relation to any transaction in a series of linked transactions-

(a) any reference in this paragraph or paragraph 6 to the aggregate market value of the assets disposed of by all the transactions in the series is a reference to what would have been the market value of all those assets for the purposes of this Chapter if, considering all the assets together, they had been disposed of by one disposal occurring at the time of the transaction concerned; and

(b) any reference in paragraph 6 to the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series is a reference to that portion of the market value determined in accordance with paragraph (a) above which it is reasonable to apportion to those of the assets which were actually disposed of by the transaction concerned.

(4) The reference in sub-paragraph (3)(a) above to considering all the assets together includes a reference not only to considering them as a group or holding or collection of assets retaining their separate identities but also (if it gives a higher market value) to considering them as brought together, physically or in law, so as to constitute either a single asset or a number of assets which are distinct from those which were comprised in each of the transactions concerned.

(5) If any of the assets disposed of by all the transactions in a series of linked transactions were acquired after the time of the first of those transactions, then, in the application of sub-paragraphs (3) and (4) above in relation to each of the transactions in the series-

(a) no account shall be taken of any assets which were acquired after the time of that transaction unless they were acquired by way of an inter-group transfer; and

(b) subject to sub-paragraph (6) below, the number of assets of which account is to be taken shall be limited to the maximum number which were held by the person making the disposal at any time in the period beginning immediately before the first of the transactions in the series and ending immediately before the last.

(6) If, before the first of the transactions referred to in paragraph (b) of sub-paragraph (5) above, the person concerned (being a company) disposed of any assets by way of an inter-group transfer, the maximum number of assets referred to in that paragraph shall be determined as if the inter-group transfer had occurred after that first transaction.

(7) In the application of sub-paragraph (5) above in a case where the assets disposed of are securities, the assets disposed of by any of the transactions in a series of linked transactions shall be identified with assets acquired on an earlier date rather than with assets acquired on a later date.

(8) In sub-paragraph (7) above "securities" includes any assets which are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

Disposal where capital sums derived from assets

8. (1) Subject to paragraph 9(1), and to any other exceptions in this Ordinance, there is for the purposes of this Chapter a disposal of assets by their owner where any capital sum is derived from assets notwithstanding that no asset is acquired by the person paying the capital sum, and this sub-paragraph applies in particular to-

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

(b) capital sums received as consideration for use or exploitation of assets.

(2) In the case of a disposal within paragraph (a) or (b) of sub-paragraph (1) above, the time of the disposal shall be the time when the capital sum is received as described in that sub-paragraph.

(3) In this paragraph "capital sum" means any money or money's worth which is not excluded from the consideration taken into account in the computation of the gain.

Mortgages and charges not to be treated as disposals

9. (1) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of this Chapter as involving any acquisition or disposal of the asset.

(2) Where a person ("the nominee") who is entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for the purposes of this Chapter as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this sub-paragraph shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the nominee.

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

Disposals in case of hire-purchase, etc.

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

PART II
SPECIAL PROVISION RELATING TO SECURITIES

Share pooling and identification of securities

11. (1) Subject to the following provisions of this Part of this Schedule, any number of securities of the same class acquired by the same person in the same capacity shall for the purposes of this Chapter be regarded as indistinguishable parts of a single asset growing or diminishing on the occasions on which additional securities of the same class are acquired or some of the securities of that class are disposed of.

(2) In this Part of this Schedule-

"a new holding" is a holding of securities which, by virtue of subparagraph (1) above, is to be regarded as a single asset; and

"securities" means unquoted shares.

(3) The provisions of this Part of this Schedule-

(a) shall apply separately in relation to any securities held by a person to whom they were issued as an employee of the company or of any other person on terms which restrict his rights to dispose of them, so long as those terms are in force; and

(b) while applying separately to any such securities, shall have effect as if the owner held them in a capacity other than that in which he holds any other securities of the same class.

(4) Where a person is the owner of securities on 1st January 1996 which he acquired before that date, he shall be deemed to have disposed of the securities and immediately reacquired them at their market value immediately before that date.

(5) Nothing in this Part of this Schedule shall be taken as affecting the manner in which the market value of any securities is to be ascertained.

(6) Without prejudice to the generality of sub-paragraphs (1) and (2) above, a disposal of securities in a new holding, other than a disposal of the whole of it, is a disposal of part of an asset and the provisions of this Chapter relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.

12. (1) The following provisions shall apply where securities of the same class are acquired or disposed of by the same person on the same day and in the same capacity-

(a) all the securities so acquired shall be treated as acquired by a single transaction and all the securities so disposed of shall be treated as disposed of by a single transaction; and

(b) all the securities so acquired shall, so far as their quantity does not exceed that of the securities so disposed of, be identified with those securities.

(2) Where the quantity of the securities so disposed of exceeds the quantity of the securities so acquired, then so far as the excess is not required by any provision of paragraph 11 or 13 of this Schedule to be identified with securities acquired before the day of the disposal, it shall be treated as diminishing a quantity subsequently acquired, and a quantity so acquired at an earlier date, rather than one so acquired at a later date.

13. (1) Where a person disposes of securities, the securities disposed of shall be identified in accordance with the provisions of this paragraph with securities of the same class acquired by him which could be comprised in that disposal.

(2) This paragraph applies notwithstanding that securities disposed of are otherwise identified by the disposal or by a transfer or delivery giving effect to it (but so that where a person disposes of securities in one capacity, they shall not be identified with securities which he holds or can dispose of only in some other capacity).

(3) Subject to paragraph 2 and the following provisions of this paragraph, securities disposed of shall be identified with securities acquired at a later time rather than with securities acquired at an earlier time.

(4) Without prejudice to paragraph 2, if, within a period of ten days, a number of securities are acquired and subsequently a number of securities are disposed of and, apart from this sub-paragraph-

(a) the securities acquired would increase the size of, or constitute a new holding; and

(b) the securities disposed of would decrease the size of, or extinguish, the same new holding,

then, subject to sub-paragraphs (5) and (6) below, the securities disposed of shall be identified with the securities acquired and none of them shall be regarded as forming part of an existing new holding or constituting a new holding.

(5) If, in a case falling within sub-paragraph (4) above, the number of securities acquired exceeds the number disposed of-

(a) the excess shall be regarded as forming part of an existing new holding or, as the case may be, as constituting a new holding; and

(b) if the securities acquired were acquired at different times (within the ten days referred to in sub-paragraph (4) above) the securities disposed of shall be identified with securities acquired at an earlier time rather than with securities acquired at a later time.

(6) If, in a case falling within sub-paragraph (4) above, the number of securities disposed of exceeds the number acquired, the excess shall not be identified in accordance with that sub-paragraph.

Reorganisation or reduction of share capital

14. (1) For the purposes of this Part of this Schedule "reorganisation" means a reorganisation or reduction of a company's share capital, and in relation to the reorganisation-

"original shares" means shares held before and concerned in the -reorganisation;

"reorganised holding" means, in relation to any original shares, the shares in the company which as a result of the reorganisation represent the original shares (including such, if any, of the original shares as remain).

(2) The reference in sub-paragraph (1) above to the reorganisation of a company's share capital includes-

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

[S. 7/Ord. 26/98/w.e.f. 1/1/97.]

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

(3) The reference in sub-paragraph (1) above to a reduction of share capital does not include the paying off of redeemable share capital, and where shares in a company are redeemed by the company otherwise than by the issue of shares (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

15. Subject to the following provisions of this Part of this Schedule, a reorganisation shall not be treated as involving any disposal of the original shares or any acquisition of the reorganised holding or any part of it, but the original shares (taken as a single asset) and the reorganised holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

16. (1) Subject to sub-paragraph (2) below, where, on a reorganisation, a person gives or becomes liable to give any consideration for his reorganised holding or any part of it, that consideration shall in relation to any disposal of the reorganised holding or any part of it be treated as having been given for the original shares, and if the reorganised holding or part of it is disposed of with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.

(2) There shall not be treated as consideration given for the reorganised holding or any part of it-

(a) any surrender, cancellation or other alteration of the original shares or of the rights attached thereto; or

(b) any consideration consisting of any application, in paying up the reorganised holding or any part of it, of assets of the company or of any dividend or other distribution declared out of those assets but not made,

and any consideration given for the reorganised holding or any part of it otherwise than by way of a bargain made at arm's length shall be disregarded to the extent that its amount or value exceeds the relevant increase in value; and for this purpose "the relevant increase in value" means the amount by which the market value of the reorganised holding immediately after the reorganisation exceeds the market value of the original shares immediately before the reorganisation.

(3) Where on a reorganisation a person receives (or is deemed to receive), or becomes entitled to receive, any consideration, other than the reorganised holding, for the disposal of an interest in the original shares he shall be treated as if the reorganised holding resulted from his having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the reorganised holding being treated in accordance with paragraph 15 above as the same asset).

(4) Where for the purpose of sub-paragraph (3) above it is necessary in computing the gain or loss accruing on the disposal of the interest in the original shares mentioned in that sub-paragraph to apportion the cost of acquisition of the original shares between what is disposed of and what is retained, the apportionment shall be made in the like manner as under paragraph 17 below.

17. Where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the reorganised holding it is necessary to apportion the cost of acquisition of any of the original shares between what is disposed of and what is retained, the apportionment shall be made by reference to market value at the date of the disposal (with such adjustment of the market value of any part of the reorganised holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

PART III
INDIVIDUALS, TRUSTEES, ETC.

Husbands and wives

18. (1) If, in any year of assessment, and in the case of a woman who in that year of assessment is a married woman living with her husband, the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(2) This paragraph shall not apply-

(a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal; or

(b) the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset; or

(c) if the disposal is by way of *donatio mortis causa*,

but this paragraph shall have effect notwithstanding any other provision of this Ordinance fixing the amount of the consideration deemed to be given on a disposal or acquisition.

Nominees and bare trustees

19. (1) In any case where assets are held-

(a) by a person as nominee for another person; or

(b) as trustee for another person absolutely entitled as against the trustee; or

(c) for any person who would be so entitled but for being an infant or other person under disability (or for two or more persons who are or would be jointly so entitled),

this Chapter shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

(2) It is hereby declared that references in this Chapter to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

Death: general provisions

20. (1) For the purposes of this Chapter the assets which a deceased person was competent to dispose of-

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

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

(2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the three years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.

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

(4) On a person acquiring any asset as legatee (as defined in paragraph 21 below)-

(a) no chargeable gain shall accrue to the personal representatives; and

(b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

(5) Notwithstanding section 144(1), no chargeable gain shall accrue to any person on his making a disposal by way of *donatio mortis causa*.

(6) Subject to sub-paragraphs (7) and (8) below, where within the period of two years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions-

(a) the variation or disclaimer shall not constitute a disposal for the purposes of this Chapter; and

(b) this paragraph shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.

(7) Sub-paragraph (6) above does not apply to a variation unless the person or persons making the instrument so elect by notice given to the Commissioner within six months after the date of the instrument.

[S. 12&Sch/Ord. 8/21/w.e.f. 30/9/21.]

(8) Sub-paragraph (6) above does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.

(9) Sub-paragraph (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

(10) In this paragraph references to assets of which a deceased person was competent to dispose-

(a) are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in the Falkland Islands and, if he was not domiciled in the Falkland Islands, that he was domiciled in the Falkland Islands; and

(b) include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

Expenses in administration of estates and trusts

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

(a) any expenditure within paragraph 1(2) above incurred by him in relation to the transfer of the asset to him by the personal representatives or trustees; and

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

shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.

(2) In this Chapter, unless the context otherwise requires, "legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a person taking under a *donatio mortis causa* shall be treated (except for the purposes of paragraph 20 above) as a legatee and his acquisition as made at the time of the donor's death.

(3) For the purposes of the definition of "legatee" above, and of any reference in this Ordinance to a person acquiring an asset "as legatee", property taken under a testamentary disposition or on an intestacy or partial intestacy includes any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy.

Insolvents' assets

22. (1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement-

(a) this Chapter shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to him by the bankrupt or debtor being disregarded accordingly); and

(b) tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from him.

(2) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of this Chapter be regarded as held by a personal representative of the deceased and-

(a) sub-paragraph (1) above shall not apply after the death; and

(b) paragraph 20(1) shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if he were a personal representative.

(3) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of this Chapter be regarded as held by a personal representative of the deceased, and sub-paragraph (1) above shall not apply.

(4) In this paragraph "deed of arrangement" means a deed of arrangement to which the Deeds of Arrangement Act 1914 applies.

SCHEDULE 2A
PROVISION NOT AT ARM'S LENGTH

[S. 20/Ord. 23/02/w.e.f. 1/1/03.]

1. (1) This Schedule applies where-

(a) provision ("the actual provision") has been made or imposed on or after 1st January 2003 as between any two persons ("the affected persons") by means of a transaction or series of transactions, and

(b) at the time of the making or imposition of the actual provision-

(i) one of the affected persons was directly or indirectly participating in the management, control or capital of the other; or

(ii) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(2) Subject to paragraphs 9 and 12 below, if the actual provision-

(a) differs from the provision ("the arm's length provision") which would have been made as between independent enterprises; and

(b) confers a potential advantage in relation to Falkland Islands taxation on one of the affected persons, or (whether or not the same advantage) on each of them,

the profits and losses of the potentially advantaged person or, as the case may be, of each of the potentially advantaged persons shall be computed for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(3) For the purposes of this Schedule the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises shall include the case in which provision is made or imposed as between any two persons but no provision would have been made as between independent enterprises; and references in this Schedule to the arm's length provision shall be construed accordingly.

Principles for construing rules in accordance with OECD principles

2. (1) This Schedule shall be construed (subject to paragraphs 9 and 10 below) in such manner as best secures consistency between-

(a) the effect given to paragraph 1 above; and

(b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.

(2) In this paragraph "the OECD model" means-

(a) the rules which on 1st January 2003 were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development; or

(b) any rules in the same or equivalent terms.

(3) In this paragraph "the transfer pricing guidelines" means-

(a) all the documents published by the Organisation for Economic Co-operation and Development, at any time before 1st May 1998, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations; and

(b) such documents published by that Organisation on or after that date as may for the purposes of this Schedule be designated, by an order made by the Governor, as comprised in the transfer pricing guidelines.

Meaning of "transaction" and "series of transactions"

3. (1) In this Schedule "transaction" includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Schedule to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions shall not be prevented by reason only of one or more of the matters mentioned in sub-paragraph (4) below from being regarded for the purposes of this Schedule as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are-

(a) that there is no transaction in the series to which both those persons are parties;

(b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons; and

(c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this paragraph, "arrangement" means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

Participation in the management, control or capital of a person

4. (1) For the purposes of this Schedule a person is directly participating in the management, control or capital of another person at a particular time if, and only if, that other person is at that time-

(a) a body corporate or a partnership; and

(b) controlled by the first person.

(2) For the purposes of this Schedule a person ("the potential participant") is indirectly participating in the management, control or capital of another person at a particular time if, and only if-

(a) he would be taken to be directly so participating at that time if the rights and powers attributed to him included all the rights and powers mentioned in sub-paragraph (3) below that are not already attributed to him for the purposes of sub-paragraph (1) above; or

(b) he is, at that time, one of a number of major participants in that other person's enterprise.

(3) The rights and powers referred to in sub-paragraph (2)(a) above are-

(a) rights and powers which the potential participant is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

(b) rights and powers of persons other than the potential participant to the extent that they are rights or powers falling within sub-paragraph (4) below;

(c) rights and powers of any person with whom the potential participant is connected; and

(d) rights and powers which for the purposes of sub-paragraph (2)(a) above would be attributed to a person with whom the potential participant is connected if that connected person were himself the potential participant.

(4) Rights and powers fall within this sub-paragraph to the extent that they-

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say-

(i) on behalf of the potential participant;

(ii) under the direction of the potential participant; or

(iii) for the benefit of the potential participant; and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(5) In sub-paragraphs (3)(b) to (d) and (4) above, the references to a person's rights and powers include references to any rights or powers which he either-

(a) is entitled to acquire at a future date; or

(b) will, at a future date, become entitled to acquire.

(6) In paragraph (d) of sub-paragraph (3) above, the reference to rights and powers which would be attributed to a connected person if he were the potential participant includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to him through a number of persons each of whom is connected with at least one of the others.

(7) For the purposes of this paragraph a person ("the potential major participant") is a major participant in another person's enterprise at a particular time if at that time-

(a) that other person ("the subordinate") is a body corporate or partnership; and

(b) the 40 per cent test is satisfied in the case of each of two persons who, taken together, control the subordinate and of whom one is the potential major participant.

(8) For the purposes of this paragraph the 40 per cent test is satisfied in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and -powers in respect of which the pair of them fall to be taken as controlling the subordinate.

(9) For the purposes of this paragraph-

(a) the question whether a person is controlled by any two or more -persons taken together; and

(b) any question whether the 40 per cent test is satisfied in the case of a person who is one of two persons,

shall be determined after attributing to each of the persons all the rights and powers attributed to a potential participant for the purposes of subparagraph (2)(a) above.

(10) References in this paragraph-

(a) to rights and powers of a person; or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

(11) For the purposes of this paragraph two persons are connected with each other if-

(a) one of them is an individual and the other is his spouse, a relative of his or of his spouse, or the spouse of such a relative; or

(b) one of them is a trustee of a settlement and the other is-

(i) a person who in relation to that settlement is a settlor; or

(ii) a person who is connected with a person falling within sub-paragraph (i) above.

(12) In sub-paragraph (11) above-

"relative" means brother, sister, ancestor or lineal descendant; and

"settlement" and "settlor" have the same meanings as in section 208

Advantage in relation to Falkland Islands taxation

5. (1) For the purposes of this Schedule (but subject to sub-paragraph (2) below) the actual provision confers a potential advantage on a person in relation to Falkland Islands taxation

wherever, disregarding this Schedule, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of the following, that is to say-

(a) that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of that person's profits for any chargeable period; or

(b) that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of that person.

(2) Subject to paragraph 10(2) below, the actual provision shall not be taken for the purposes of this Schedule to confer a potential advantage in relation to Falkland Islands taxation on either of the persons as between whom it is made or imposed if the two conditions set out in sub-paragraphs (3) and (4) below are both satisfied in the case of each of those two persons.

[S. 26/Ord. 16/13/w.e.f. 1/1/14.]

(3) The first condition is satisfied in the case of any person if-

(a) that person is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities;

(b) that person is not entitled to any exemption from income tax or corporation tax in respect of, or of a part of, the income or profits arising from the relevant activities in respect of which he is within that charge; and

(c) where that person is within the charge to income tax in respect of profits arising from those activities, he is resident in the Falkland Islands in the chargeable periods in which he is so within that charge.

(4) The second condition is satisfied in the case of any person if he is -neither-

(a) a person with an entitlement, in pursuance of any double taxation arrangements or under section 169, to be given credit in any chargeable period for any foreign tax on or in respect of profits arising from the relevant activities; nor

(b) a person who would have such an entitlement in any such period if there were any such profits or if they exceeded a certain amount.

Elimination of double counting

6. (1) This paragraph applies where-

(a) only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to Falkland Islands taxation is conferred by the actual provision; but

(b) the other affected person ("the disadvantaged person") is a person in relation to whom the condition set out in sub-paragraph (3) of paragraph 5 above either-

(i) is satisfied; or

(ii) were any such exemption as is mentioned in paragraph (b) of that sub-paragraph to be disregarded, would be satisfied.

(2) Subject to sub-paragraphs (3) to (6) and paragraph 7 below, on the making of a claim by the disadvantaged person for the purposes of this paragraph-

(a) the disadvantaged person shall be entitled to have his profits and losses computed for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision; and

(b) notwithstanding any limit in this Ordinance on the time within which any adjustment may be made, all such adjustments shall be made in his case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.

(3) A claim made by the disadvantaged person for the purposes of this paragraph-

(a) shall not be made unless a computation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision; and

(b) must be consistent with the computation made on that basis in the case of the advantaged person.

(4) For the purposes of sub-paragraph (3) above a computation shall be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if, and only if-

(a) the computations made for the purposes of any return by the advantaged person have been made on that basis by virtue of this Schedule; or

(b) a relevant notice given to the advantaged person takes account of a determination in pursuance of this Schedule of an amount falling to be brought into account for tax purposes on that basis.

(5) A claim for the purposes of this paragraph shall not be made except within one of the following periods-

(a) in a case where a return has been made by the advantaged person on the basis mentioned in sub-paragraph (3)(a) above, the period of two years beginning with the day of the making of the return; and

(b) in any case where a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above has been given to the advantaged person, the period of two years beginning with the day on which that notice was given.

(6) Where-

(a) a claim for the purposes of this paragraph is made by the disadvantaged person in relation to a return made on the basis mentioned in sub-paragraph (3)(a) above; and

(b) a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above is subsequently given to the advantaged person,

the disadvantaged person shall be entitled, within the period mentioned in sub-paragraph (5)(b) above, to make any such amendment of the claim as may be appropriate in consequence of the determination contained in that notice.

(7) In this paragraph-

"relevant notice" means a notice of an assessment under Part IX of this Ordinance;

"return" means any return required to be made under this Ordinance for income tax or corporation tax purposes.

Adjustment of disadvantaged person's double taxation relief

7. (1) Where-

(a) a claim is made for the purposes of paragraph 6 above; and

(b) the disadvantaged person is entitled, on that claim, to make a computation, or to have an adjustment made in his case, on the basis that the arm's length provision was made or imposed instead of the actual provision,

the assumptions specified in sub-paragraph (2) below shall apply, in the disadvantaged person's case, as respects any credit for foreign tax which the disadvantaged person has been or may be given in pursuance of any double taxation arrangements or under section 169

(2) Those assumptions are-

(a) that the foreign tax paid or payable by the disadvantaged person does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision; and

(b) that the amount of the relevant profits of the disadvantaged person in respect of which he is given credit for foreign tax does not include the amount (if any) by which his relevant profits are treated as reduced in accordance with paragraph 6 above.

(3) Where, in a case in which a claim has been made for the purposes of paragraph 6 above, any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this paragraph-

(a) it may be made in any case by setting the amount of the adjustment against any relief or repayment to which the disadvantaged person is entitled in pursuance of that claim; and

(b) nothing in this Ordinance limiting the time within which any assessment is to be or may be made or amended shall prevent that adjustment from being so made.

(4) References in this paragraph to relevant profits of the disadvantaged person are references to profits arising to the disadvantaged person from the carrying on of the relevant activities.

Special rules for sales, etc., of oil

8. (1) Subject to paragraph 9 below, this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil if-

(a) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company ("the producer") which (although it may be the seller) is not the buyer; and

(b) at the time of the sale not less than 20 per cent of the producer's ordinary share capital is owned directly or indirectly by one or more of the following, that is to say, the buyer and the companies (if any) that are linked to the buyer.

(2) Where this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil, this Schedule shall have effect as respects that provision as if the buyer, the seller and (if it is not the seller) the producer were all controlled by the same person at the time of the making or imposition of that provision.

(3) For the purposes of this paragraph two companies are linked if-

(a) one is under the control of the other; or

(b) both are under the control of the same person or persons.

(4) For the purposes of this paragraph-

(a) any question whether ordinary share capital is owned directly or indirectly by a company shall be determined as for section 207;

(b) rights to extract oil shall be taken to be exercisable by a company even if they are exercisable by that company only jointly with one or more other companies; and

(c) a sale of oil shall be deemed to take place at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier.

(5) In this paragraph "oil" includes any mineral oil or relative hydrocarbon, as well as natural gas.

Transactions and deemed transactions involving oil

9. This Schedule does not apply in relation to provision made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with section 151 (transactions and deemed transactions involving oil treated as made at market value).

Special provision for companies carrying on ring-fence trades

10. (1) This paragraph applies where any person ("the taxpayer") carries on a ring-fence trade

(2) Subject to paragraph 9 above and sub-paragraph (4) below, where provision made or imposed as between the taxpayer and another person by means of a transaction or series of transactions-

(a) falls, in relation to the taxpayer, to be regarded as made or imposed in the course of, or with respect to, the ring-fence trade; but

(b) falls, in relation to the other person, to be regarded as made or imposed in the course of, or with respect to, activities of that other person which do not fall within section 150(1)(a), (b) or (c),

this Schedule shall have effect in relation to that provision with the omission of paragraph 5(2) above.

(3) Subject to paragraph 9 above and sub-paragraph (4) below, this Schedule shall have effect as respects any provision made or imposed by the taxpayer as between the ring-fence trade and any other activities carried on by him as if-

(a) that trade and those activities were carried on by two different persons;

(b) that provision were made or imposed as between those two persons by means of a transaction;

(c) a potential advantage in relation to Falkland Islands taxation were conferred by that provision on each of those two persons;

(d) those two persons were both controlled by the same person at the time of the making or imposition of that provision; and

(e) paragraphs 5 to 7 above were omitted.

(4) This Schedule shall apply in accordance with this paragraph in relation to any provision mentioned in sub-paragraph (2) or (3) above only where the effect of its application in relation to that provision is either-

(a) that a larger amount (including, if there would not otherwise have been profits, an amount of more than nil) is taken for tax purposes to be the amount of the profits of the ring-fence trade for any chargeable period; or

(b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of that trade.

Saving for the provisions relating to capital allowances and capital gains

11. Nothing in this Schedule shall be construed as affecting-

(a) the computation of the amount of any capital allowance or balancing charge made under Chapter II of Part V of this Ordinance; or

(b) the computation in accordance with Chapter II of Part VI of this Ordinance of the amount of any chargeable gain or allowable loss;

and nothing in this Schedule shall require the profits or losses of any person to be computed for tax purposes as if, in his case, instead of income or losses falling to be brought into account in connection with the taxation of income, there were gains or losses falling to be brought into account in accordance with Chapter II of Part VI.

General interpretation, etc.

12. (1) In this Schedule-

"the actual provision" and "the affected persons" shall be construed in accordance with paragraph 1(1) above;

"the arm's length provision" shall be construed in accordance with paragraph 1(2) and (3) above;

"double taxation arrangements" means arrangements having effect by virtue of section 165;

"foreign tax" means any tax under the law of a territory outside the Falkland Islands or any amount which falls for the purposes of any -double taxation arrangements to be treated as if it were such tax;

"profits" includes income;

"the relevant activities", in relation to a person who is one of the -persons as between whom any provision is made or imposed, means such of his activities as-

(i) comprise the activities in the course of which, or with respect to which, that provision is made or imposed; and

(ii) are not activities carried on either separately from those activities or for the purposes of a different part of that person's business;

"transaction" and "series of transactions" shall be construed in accordance with paragraph 3 above.

(2) Without prejudice to paragraphs 8(2) and 10(3) above, references in this Schedule to a person controlling a body corporate or a partnership shall be construed in accordance with section 209

(3) In determining for the purposes of this Schedule whether a person has an entitlement, in pursuance of any double taxation arrangements or under section 169, to be given credit for foreign tax, any requirement that a claim is made before such a credit is given shall be disregarded.

(4) Any adjustments required to be made by virtue of this Schedule may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

(5) This Schedule shall have effect as if-

(a) a unit trust scheme were a company that is a body corporate;

(b) the rights of the unit holders under such a scheme were shares in the company that the scheme is deemed to be;

(c) rights and powers of a person in the capacity of a person entitled to act for the purposes of the scheme were rights and powers of the scheme; and

(d) provision made or imposed as between any person in such a capacity and another person were made or imposed as between the scheme and that other person.

SCHEDULE 3
TAX APPEALS

Interpretation

1. In this Schedule-

"**the Chairman**" means the Chairman of the Tax Appeal Tribunal;

"**the Clerk**" means the Clerk to the Tax Appeal Tribunal;

"**the Tribunal**" means the Tax Appeal Tribunal.

Written representation appeals

2. (1) Where the Commissioner receives a copy of a notice of appeal under section 181 which does not request an oral hearing, the Commissioner shall, before the expiry of the period of twenty-one days beginning with the date of receipt of the copy notice, or such later period as the Chairman may permit, send to the Clerk his own written representations with respect to the appeal, supporting the decision or decisions appealed against in general and responding to the grounds of appeal in particular.

(2) The Clerk shall send a copy of any representations of the Commissioner made in accordance with sub-paragraph (1) above to the appellant together with a notice informing the appellant that he may submit his own representations to the Tribunal before the expiry of the period of twenty-one days beginning with the date of the notice, or such later period as the Chairman may permit.

(3) The Clerk shall send copies of any representation received in accordance with sub-paragraph (2) above to the Chairman and to the Commissioner.

(4) If it appears to the Chairman that-

(a) the written representations of the appellant raise any fresh ground of appeal (that is to say, which is not raised in the appellant's original notice of appeal); and

(b) the fresh ground has been anticipated in the Commissioner's own written representations, so that no injustice to the Commissioner is likely to result if he is not offered the opportunity of making further written representations,

the Chairman shall cause the Clerk to notify the Commissioner that the Commissioner may, in relation only to the fresh grounds of appeal specified in the notice, submit such further written representations to the Clerk before the expiry of the period of fourteen days beginning with the date of the notice, or such later period as the Chairman may permit.

(5) On receiving any further written representations of the Commissioner submitted in accordance with sub-paragraph (4), the Clerk shall send copies of them to the Chairman and to the appellant but, unless the Chairman for special reason otherwise directs, the appellant shall not have the right to submit any further written representations on his own behalf.

(6) The Clerk shall ensure that the appeal is considered by the Tribunal as soon as reasonably possible after the expiry of the period or periods during which representations may be made under the preceding provisions of this paragraph.

(7) The Clerk shall send to every member of the Tribunal-

(a) a copy of the notice of appeal and of all written representations received in accordance with this paragraph relating to the appeal;

(b) notice of the date on and time and place at which the appeal will be considered by the Tribunal.

(8) The Tribunal shall not, on consideration of an appeal under this paragraph-

(a) consider any representations other than written representations submitted in accordance with this paragraph;

(b) permit any person other than a member of the Tribunal or the Clerk to be present.

(9) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(10) As soon as reasonably convenient the Clerk shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

Oral appeals

3. (1) Where the appellant's notice of appeal under section 181 requests an oral hearing, the Clerk shall give notice of the date on which and time and place at which the hearing will begin-

(a) to every member of the Tribunal;

(b) to the appellant; and

(c) to the Commissioner.

(2) At the hearing, the appellant and the Commissioner may appear and be heard in person or by any other person appointed by or on behalf of the appellant or Commissioner to act in that behalf before the Tribunal; and in the following provisions of this paragraph any reference to the appellant or the Commissioner shall be construed accordingly.

(3) The following procedural rules shall apply for the conduct of the hearing-

(a) the appellant shall be heard first and then the Commissioner shall be heard in reply;

(b) the appellant and the Commissioner shall each have the right to call witnesses or to produce written evidence as part of their case, and any witness who gives oral evidence may be cross-examined by the other party;

(c) the Commissioner may not call or produce any evidence or speak in reply to the appellant's case until the appellant's witnesses have completed their evidence and any written evidence he wishes to produce has been produced;

(d) if the Commissioner calls witnesses or produces written evidence after the close of the case for the appellant, the appellant shall have the right (if he wishes) to address the Tribunal for a second time.

(4) After the Tribunal has heard the parties to the appeal, the Tribunal shall require the parties (and any witnesses they may have called) to with-draw, and shall then consider its decision in the appeal.

(5) The Clerk shall make a sufficient note of-

(a) the address or addresses of the parties; and

(b) any oral evidence given to the Tribunal.

(6) The Tribunal shall not require any evidence given to it during the hearing of an appeal to be given on oath or affirmation.

(7) The Tribunal shall not permit any person other than-

(a) the members of the Tribunal hearing the appeal;

(b) the parties, their representatives and their witnesses; and

(c) the Clerk to the Tribunal,

to be present during the hearing of an appeal under this paragraph.

(8) The Tribunal shall cause its decision and the reasons for that decision to be taken down in writing by the Clerk.

(9) As soon as reasonably convenient the Clerk to the Tribunal shall cause a fair copy of the Tribunal's decision and the reasons for it to be signed by the Chairman or other member of the Tribunal presiding during the consideration of the appeal, and the copy so signed shall then constitute the determination of the appeal.

Notification of determination of appeal: further appeal on point of law

4. (1) As soon as possible after the determination of the appeal has been signed, the Clerk shall transmit a copy of it to the appellant and to the Commissioner.

(2) The appellant and the Commissioner may appeal against the determination of the Tribunal to the Supreme Court on a point of law.

(3) An appeal under this paragraph shall be lodged by the appellant or the Commissioner in triplicate with the Registrar of the Supreme Court within twenty-eight days of the receipt by the appellant or the Commissioner (as the case may be) of the notice of the Tribunal's determination; and the notice of appeal shall-

(a) specify the point of law in question;

(b) the reasons for alleging that in relation to that point of law, that the Tribunal was in error.

(4) On determination of an appeal under this paragraph, the Supreme Court may-

(a) correct any immaterial informality or error in the determination of the Tribunal which it is satisfied can be made without injustice to the parties;

(b) quash or vary the determination of the Tribunal in such manner as it considers appropriate; and

(c) make any other order it considers appropriate in the circumstances of the case (including, without prejudice to the generality of the foregoing, an order as to the costs of the appeal to the Supreme Court).

(5) The Chief Justice may make rules in relation to the procedure of the Supreme Court in appeals under this paragraph, but until such rules are first made, and subject to the foregoing provisions of this paragraph, the procedure on such appeals shall as nearly as possible be that on civil appeals to the Supreme Court.

Commissioner to give effect to decisions on appeal

5. (1) Subject to sub-paragraph (2), the Commissioner shall take such steps and do such things as are necessary to give effect to the determination of the Tribunal on an appeal to it.

(2) Sub-paragraph (1) does not apply where the Commissioner has appealed or intends to appeal in accordance with this Schedule to the Supreme Court against the determination of the Tribunal, but in such a case the Commissioner shall not seek to enforce payment of any tax until or unless the determination of the Tribunal is quashed or varied to the relevant extent by the Supreme Court, if to do so would be inconsistent with the determination of the Tribunal.

(3) The Commissioner shall, so far as it affects him, take all such steps and do all such things as are necessary to give effect to any order of the Supreme Court on an appeal under this Schedule.

Supplementary provisions

6. (1) A member of the Tribunal is not personally liable in respect of anything done or omitted by him in good faith in the course of his functions as such a member.

(2) The Tribunal has no power to award to any person any costs of an appeal to it.

(3) For the avoidance of doubt, it is hereby declared that section 202 applies to all members of the Tribunal and to the Clerk in the performance of their functions as such.

(4) Neither the bringing of an appeal to the Tribunal nor the bringing of a further appeal from the Tribunal to the Supreme Court shall (otherwise than by reason of the manner of determination of that appeal or further appeal) have effect-

(a) to postpone any liability to pay any tax except in accordance with section 183;

(b) to excuse any person from payment of interest on any tax overdue or abate that interest; or

(c) to excuse any person from any penalty otherwise payable under this Ordinance.

SCHEDULE 4
PROCEEDINGS FOR THE RECOVERY OF TAX

Notice to be given to tax defaulters

1. (1) The Commissioner shall on such days in each year as the Governor in Council may direct cause to be inserted in three consecutive issues of the Gazette a notice to the effect that warrants will be issued for the recovery of all tax together with interest, penalties and fines due thereon which remain unpaid after such day as may be specified in the notice.

(2) The specified day shall not be earlier than one month from the first publication of the notice and publication in accordance with this section shall be sufficient notice to all tax defaulters.

Warrants against goods, power to sell lands, etc.

2. (1) The collector shall, on such day in each year as the Governor in Council may direct, issue to any person whom he may employ as bailiff for this purpose ("the bailiff") warrants directing and authorizing him to make a levy upon the goods of all defaulters for the payment of tax, interest, penalties and fines unpaid in the previous year.

(2) The collector may issue another warrant or warrants directed to any bailiff to recover any tax, interest, penalties or fines still outstanding and due from a defaulter named in a warrant previously issued by him.

(3) This paragraph is without prejudice to the power of the Financial Secretary under paragraph 10 below, to proceed to sell or issue a praecipe authorizing the sale of any land or house chargeable with the unpaid taxes, interest, penalties or fines together with any expenses of the collector in respect of anything done to recover the unpaid taxes, interest, penalties or fines at any time.

Withdrawal of execution and institution of proceedings before magistrate

3. Notwithstanding that the name of a person in default in the payment of any tax, interest, penalties or fines shall have been included in a list to any warrant or praecipe authorizing a levy, the Financial Secretary may, at his discretion, at any time that the tax, interest, penalty or fine remains unpaid, cause the warrant or praecipe to be suspended as against the defaulter and instead to apply to the Senior Magistrate for a summons directing the defaulter to attend before the Senior Magistrate, at such time as may be specified in the summons, to show cause why he should not be ordered to pay the amount unpaid as a judgment debt, and the Senior Magistrate may in his discretion issue the summons and cause the same to be served.

Order of magistrate for payment of unpaid sums

4. If a summons is issued under paragraph 3 above, the Senior Magistrate may on the hearing of the summons order the defaulter to pay into court the amount of the unpaid tax, interest, penalties or fines, and such costs and expenses as may have been incurred, or to order him to pay into court any part of such amount which the Senior Magistrate may deem the defaulter able to pay or arrange for paying, within seven days of the order or within such extended time as may be determined by the Senior Magistrate, either as a lump sum or by instalments.

Imprisonment for failure to obey order

5. (1) If a person summoned under paragraph 3 above fails to comply with the summons without lawful excuse or if he fails to comply with an order under paragraph 4 above, the Senior Magistrate may commit him to prison for a term not exceeding six weeks or until payment of the sum ordered to be paid (if paid before the expiration of such term).

(2) Committal shall not be ordered under this paragraph unless the Senior Magistrate is satisfied that the person in default either has, or has had since the date of the order, the means to pay the sum in respect of which he is in default, and has refused or neglected, or refuses or neglects, to pay that sum.

(3) Proof of the means of the person making default may be given in such manner as the Senior Magistrate thinks just and, for the purposes of such proof, the debtor and any witnesses may be summoned and their attendance enforced by the same processes as in cases in which the Senior Magistrate has summary jurisdiction in criminal matters, and such debtor and witnesses may be examined on oath.

(4) Every order of committal under this paragraph shall be issued, obeyed and executed in manner similar to commitments by the Senior Magistrate in the exercise of his summary jurisdiction in criminal cases.

(5) Imprisonment in pursuance of an order under this paragraph shall not satisfy or extinguish the judgment debt.

Debtor paying whole of amount ordered to be paid

6. In the event of the defaulter paying the whole of the amount ordered to be paid in pursuance of this Schedule the Senior Magistrate shall remit to the Treasury the amount so paid, deducting such part thereof as may represent the court costs.

Proceedings by way of distress

7. (1) For the purpose of levying any distress the bailiff shall execute a warrant issued to him by the collector according to the tenor thereof, and such warrant shall be in the form set out in Part I of Schedule 5.

(2) On payment of the tax, interest and fines and expenses, the bailiff shall give acquittances under his hand to the persons who pay the same on numbered (counterfoil) receipt forms with which the bailiff shall be supplied by the collector, and shall pay over to the Treasury all money received by him under this Ordinance.

Sale of goods levied on and disposal of proceeds

8. (1) When any goods or chattels are distrained on, they shall, after due notice given in the Gazette, be sold by the bailiff at public auction in such a manner as is usual in sales under executions issuing out of the Magistrate's Court.

(2) Until the sale, the goods shall remain in the custody of the bailiff by whom the levy is made.

(3) The money arising from the sale shall be paid over by the bailiff to the Treasury after deducting therefrom all reasonable and necessary charges and expenses attending the levy and sale which may be allowed by the Financial Secretary; and these proceeds of sale shall be applied by the Financial Secretary towards satisfaction of the unpaid tax, interest, penalties, fines and expenses and the surplus (if any) shall be restored on demand to the owner of the goods distrained.

(4) Sub-paragraphs (1), (2) and (3) above shall have effect subject to the following provisions-

(a) tools of trade, bedding and wearing apparel amounting in all to the value of £250 shall be exempted from execution;

(b) after a levy it shall be lawful for the owner of the goods seized to redeem the goods at any time before the time appointed for the sale by paying to the bailiff the full amount of the tax, interest, penalties and fines thereon, together with all costs and expenses incurred in relation thereto by the date of such payment;

(c) if at such public auction there shall be no bids sufficient to cover the tax, interest, penalties, fines, costs and expenses, the unsold goods shall become the property of Her Majesty for the use of the Government of the Falkland Islands.

Bailiff's fees

9. (1) The bailiff's fees which may be included in a claim of levy under a warrant may be in such sum and according to such scale as is fixed from time to time by the Governor in Council.

(2) All such fees shall be paid by the persons in default against whom warrants are issued, and the Governor in Council may award to any bailiff such proportion thereof as he shall think fit.

Execution against land or houses

10. (1) If the amount of the tax and interest, penalties due and recoverable from a person in default and of the fines, costs and expenses relating to any unpaid tax, interest or penalties have

not been, or in the opinion of the Financial Secretary cannot be, raised by the sale of that person's goods, the Financial Secretary may put up for sale either the whole of any lands or houses in the Falkland Islands to which that person is beneficially entitled, or such part thereof as in the discretion of the Financial Secretary may be selected and marked off as sufficient to realize the required amount.

(2) In default of satisfaction of the debt by any such sale, then if the lands or houses charged with the payment of unpaid tax or interest had passed out of the possession of the defaulter before the date of the said sale and consequently such last-mentioned lands or houses had not been levied as aforesaid, the Financial Secretary may in the last instance proceed to levy and sell the lands or houses last mentioned.

(3) The Financial Secretary may issue a praecipe to levy the tax by the sale of the lands or houses therein mentioned, which praecipe shall be in the form set out in Part II of Schedule 5.

Notice to be served on defaulter before sale of realty

11. (1) Before proceeding with the sale of any land or house in accordance with this Schedule, the Financial Secretary or the officer conducting the sale shall serve or cause to be served on the person in default a notice in the form set out in Part III of Schedule 5, and unless the Financial Secretary or that officer specially sanctions service by post or by some other means, any such notice shall be served personally on the person in default.

(2) Whenever the Financial Secretary or the officer has reason to believe that the person in default is avoiding service of the notice, or that neither he nor his authorized agent can be found, the Financial Secretary or officer may order the notice to be affixed in some conspicuous manner to the property with respect to which the praecipe to levy has been issued.

(3) The server or bailiff serving any such notice personally shall endeavour to explain its purport fully to the person upon whom it is served.

(4) The bailiff or server of such notice shall write on it the date when it is served by him, and shall enter upon a counterfoil of the notice or on some other record the date and manner of service and the place where it was made.

(5) Any person duly served but failing to comply with the notice within the time and in the manner prescribed commits an offence and shall be liable on summary conviction to a fine not exceeding the maximum of level 2 on the standard scale unless he proves either that, before the notice was served, he had paid the tax or fine, or that no tax or fine was or is due from him.

Property vests in Crown on abortive sale

12. (1) When the whole of any land or any house in respect of which levy has been made, has been offered for sale and no bid made for it equal to or in excess of the tax, interest, penalties, fines, costs and charges thereon, that land or house shall be liable to forfeiture at the discretion of the Governor in Council.

(2) The Financial Secretary shall cause to be served on the person in default a notice that such land or house is liable to forfeiture within one month from the date of the service of the notice, if the amount due be not paid, and no land or house shall be forfeit in pursuance of this paragraph unless such a notice has been served.

(3) When any land or house has been declared by the Governor in Council to be forfeit, the same shall vest in Her Majesty, her heirs and successors for the use of the Government of the Falkland Islands.

(4) The Financial Secretary shall forward to the Registrar of the court for the purposes of registration a statement in such form as may be prescribed by the Commissioner for the purposes of this paragraph, which shall contain the particulars of the land or house, the name of the person in default, the amount due, the date of abortive sale, and the date of the service of the notice of liability to forfeiture.

(5) The registration of the statement shall constitute an indefeasible title.

Conditions of sale

13. In all cases of the sale of lands or houses under this Ordinance the following shall be the conditions of sale-

(a) The purchaser buys at his own risk as to the provisions of the law necessary to authorize the sale having been complied with. Those who intend to purchase shall be allowed access to all documents which show that such provisions have been complied with.

(b) The purchaser shall not require any proof (beyond a copy of the notice of assessment and the praecipe with the list of defaulters' notices with service) of the identity of the contents, dimensions, or other particulars of the property offered for sale with that advertised.

(c) The highest bidder for each lot shall be the purchaser. Should any dispute arise as to any bidding, the property may again be put up for sale.

(d) The reserve price shall be the amount of the tax, interest, penalties, fines, costs and charges remaining unpaid.

(e) The advance on the bidding may be declared by the officer conducting the sale on putting up the specific lot. No bid shall be retracted without the consent of that officer.

(f) Immediately after the sale, the purchaser shall pay to the Financial Secretary, or to the officer who conducts the sale, a deposit of his bid, and the balance within seven days thereafter. In default of payment of the deposit, the property shall be offered for sale immediately and any subsequent bid by the person who has made default as aforesaid shall be ignored or refused. If the purchaser fails to complete his purchase within seven days, the deposit shall be forfeited and the property shall be re-offered for sale, when any deficiency on the first bid may be recovered from the first bidder as a debt.

(g) Except in special cases to which the Governor may give his sanction, conveyances for lands, tenements and hereditaments will only be executed on the prescribed form.

(h) Conveyances will not be executed until one month has elapsed from the date of sale, and during this period the right is reserved for the Governor to cancel the sale.

Effect of execution sales with regard to title

14. (1) Any sale of any land or any house charged with the payment of unpaid tax, interest, penalties, fines or expenses shall, subject to the provisions of this paragraph and provided that the other provisions of this Ordinance have been duly complied with, operate to confer on the purchaser an indefeasible title thereto, free from all encumbrances, and that title shall be the right, title, and interest therein of the person in default in respect of that tax or other sum.

(2) A purchaser shall not have, nor be capable of granting, any title to any land, house or goods purchased in accordance with this Ordinance, if the purchase is made with the intention of defrauding any creditor, or as agent or trustee for the person in default, or for his wife or family.

(3) Any such sale to the person in default shall be void.

(4) Any person having a charge or debt by way of specialty or otherwise upon any property of the person in default may pay the tax, interest, penalties, fines, costs and expenses payable in accordance with this Ordinance by that person, and shall be entitled to add the moneys thus paid to such charge or debt, and thereupon the increased charge or debt shall bear the same interest and may be enforced and recovered in the same manner as the original charge or debt.

Form of conveyance

15. Where any land or house is sold in accordance with this Ordinance, the Chief Executive shall execute and deliver on completion a conveyance to the purchaser in the form set out in Part IV of Schedule 5.

Disposal of surplus proceeds of sale

16. (1) Any surplus moneys arising on any sales under this Ordinance, after payment of the tax, interest, penalties, fines and costs, shall be paid by the Financial Secretary to the owner of the property sold, if known; and if not known, then they shall be at the disposal of the Governor in Council on the application of any person entitled for six years from the day of sale, after which they shall be appropriated to the Consolidated Fund.

(2) If the Financial Secretary has notice that any person other than the owner of the property sold has a claim to the whole or any part of those surplus moneys, either by way of mortgage or other legal encumbrance, the Financial Secretary may give notice to the owner stating that the moneys or some specified part of the moneys will be paid to the claimant, mortgagee, or encumbrancer, unless the owner informs the Financial Secretary within ten days from the date of service of the notice that he does not admit the claim.

(3) If no reply is received from the owner to the notice within the time permitted, the surplus moneys, or so much of them as may have specified in the notice may be paid to the claimant by the Financial Secretary.

(4) If the owner denies the claim, then the Financial Secretary shall pay the surplus moneys to the Registrar of the Supreme Court, to be placed by the Registrar to the credit of an account in court to abide the settlement by the court of the question as to what person is entitled to them.

(5) The Financial Secretary shall not be held responsible for any payment made by him in accordance with this paragraph.

Claims by third parties

17. (1) If any person (other than the person in default) claims that he is the owner of any goods or lands which are levied upon as belonging to a party in default, he or any solicitor on his behalf may file an affidavit in the Supreme Court-

(a) specifying which of the goods or lands he claims as his property;

(b) stating full particulars of his title thereto; and

(c) stating the value of the property,

and a person making a claim under this paragraph is referred to as "the claimant".

(2) If the claimant either at the time of or subsequent to the filing of the affidavit, gives security by bond with two sureties (such bonds being hereby exempted from stamp duty) to the satisfaction of the Registrar of the Supreme Court in a sum of £1,000, conditioned to secure-

(a) first, either the total amount of taxes, interest, penalties, fines, costs, and expenses unpaid or such part thereof as may be equivalent to the value of the property claimed; and

(b) secondly, all costs of the legal proceedings incidental to the determination of the claim,

the Registrar shall notify the Financial Secretary to discontinue his levy upon such of the goods and lands as are specified in the affidavit until the determination of the claim.

Abandonment of levy

18. At any time within seven days after receipt of the notification to discontinue the levy, the Financial Secretary may abandon the levy altogether, and if he does so, shall notify the Registrar and the claimant that the levy is wholly withdrawn and that no further legal proceedings will take place.

Determination of claim

19. (1) If notice of abandonment is not given by the Financial Secretary under paragraph 18, the Registrar shall set the matter down for trial at the next sitting of the Supreme Court (Summary Jurisdiction) held not later than two weeks subsequent to security being so given.

(2) At the hearing, the issue shall be whether or not the claimant has made out his title to the goods or lands specified in the affidavit, and whether the value thereof has been correctly stated in the affidavit; and, upon the issues being determined, the court shall order the bond to be enforced or cancelled, as the case may be.

(3) In proceedings brought under this paragraph-

(a) the defendant shall be, in the case of goods being claimed, the bailiff by whom the levy was made, and in the case of lands being claimed, the Financial Secretary; and

(b) all steps may be taken and things done as in ordinary cases before the court, except that an order for costs shall not be made against the defendant unless the court is of the opinion that he has been guilty of wilful neglect or misconduct.

SCHEDULE 5
WARRANTS AND OTHER FORMS

PART I
WARRANT TO LEVY

Under the Taxes Ordinance of the Falkland Islands

By: ..... Financial Secretary of the Falkland Islands

To: ..... a bailiff appointed by the said Financial Secretary in this behalf.

WHEREAS the several persons named in the list attached to this Warrant are respectively liable in respect of tax, interest or fines to pay the several amounts set opposite their names respectively in such list;

AND WHEREAS default has been made in payment of the same;

YOU are therefore hereby enjoined and required to make demand of the several sums mentioned in the said list from the persons liable therefor or on the premises charged with the assessment, as the case may require, and upon payment thereof, to give acquittances under your hand unto the several persons who shall pay the same; and if any sum or sums remain unpaid after demand duly made by you then you are hereby enjoined and required to levy upon each and every of the persons named in the list such sums of money as shall be sufficient to pay the amount set opposite to the names of such persons in the said list together with the cost attending any levy and any sale thereon or any and all other proceedings consequent thereon. And of your proceedings herein you are forthwith to make your return to me.

Given under my hand at Stanley, Falkland Islands, the *[date to be inserted here]*

Financial Secretary

PART II
PRAECIPE TO LEVY BY SALE OF LAND OR HOUSE

Under the Taxes Ordinance of the Falkland Islands

By ..... the Financial Secretary of the Falkland Islands

To .....

WHEREAS the lands or houses of the several persons named in the list to this Warrant attached are respectively liable under the Taxes Ordinance for the several amounts set opposite their respective names:

AND WHEREAS the lands or houses named in the said list are likewise respectively liable for the amount aforesaid whether or not the persons named are in possession thereof:

AND WHEREAS default has been made in payment of the said amounts,

YOU are therefore hereby enjoined and required to levy upon and sell the lands of which the several persons named in the said list are possessed, or a sufficient part thereof, to satisfy the amounts set opposite their respective names as aforesaid together with the costs attending any such levy and sale and all other proceedings consequent thereon.

AND in default of satisfaction thereby, then, if the persons named are not now in possession of the lands or houses named in the said list, you are hereby enjoined and required to levy upon the lands or houses last mentioned. And of your proceedings herein you are to make returns to me at the end of every calendar month commencing from the date hereof until your final return which you are to make to me on or before the thirtieth day of April next.

Given under my hand at Stanley, Falkland Islands, the *[date to be inserted here]*

Financial Secretary

PART III
NOTICE TO DEFAULTER

Under the Taxes Ordinance of the Falkland Islands

TAKE NOTICE that you are hereby required to fill in the following form with the statements and information thereby required, to sign the same and to deliver it within seven days from the date of the service thereof to the Officer in charge of the Treasury.

AND FURTHER TAKE NOTICE that in default of your delivering such form duly filled in and signed as aforesaid, you will commit an offence and on conviction thereof be liable to a fine not exceeding the maximum of level 2 on the standard scale.

FORM

Do you admit that you owe £..... for tax and £..... for interest, fines or penalties in respect of .....

If the whole of the above-mentioned amount is not owing by you, state how much is owing by you.

If the above-mentioned amount or any part thereof is not owing by you, but is owing by some other person, state the name of that other person.

Have you any right, title or interest in the following properties? If you have, state the nature of your interest therein:.....

.....

State any reason you may have for claiming that your property may not be sold to satisfy the amount due by you.

Dated this day of

Financial Secretary

Served by me on the *[date to be inserted here]*

Bailiff or Server

PART IV
INDENTURE

THIS INDENTURE made the *[date to be inserted here]*

between the Governor of the Falkland Islands of the one part ("the Governor") and ("the Grantee") of the other part

WITNESSETH that in consideration of the sum of ..... paid by the Grantee to the Crown (the receipt whereof is hereby acknowledged) the Governor doth, pursuant to and in exercise of the powers in him vested by the laws of the said Falkland Islands relating to income tax and corporation tax, hereby grant to the Grantee ALL THAT .....

EXCEPTING AND RESERVING to the Crown, out of the grant hereby intended to be made, all the rights, liberties and benefits in respect of the said land and every portion thereof reserved to the Crown under and by virtue of section 28 of the Land Ordinance.

To hold the said hereditaments unto and to the use of the Grantee in fee simple.

IN WITNESS whereof the Governor hath hereunto set his hand and seal the day and year above written.

Signed sealed and delivered by the

said (Governor) in the presence of L.S.

SCHEDULE 6
SUPPLEMENTARY PROVISIONS IN RESPECT OF LICENSEE

[S. 13(a)/Ord. 8/21/w.e.f. 1/1/22.]

1 General

(1) In this Schedule any reference to a licence is a reference to a petroleum licence and, in relation to a licensee, any such reference is a reference to the licence by virtue of which he is a licensee and is a reference to the whole of that licence (not merely his share or interest in the licence or in other assets).

(2) For the purposes of this Schedule, profits or gains are profits or gains in respect of which any licence was the basis for the assessment if those profits or gains fall within paragraph 3(1)(a) or (b) by reference to that licence.

2 Withholding tax and power of Commissioner to obtain information from licensees

(1) Subject to paragraph 2B, a licensee, when making payment of an amount of £5,000 or more to a company for transactions in connection with activities authorised by a licence as a result of which the company is or might be liable to tax, must —

(a) deduct 3 per cent of the total value of the invoice ("**withholding tax**") regardless of the method of payment; and

(b) make a record of the deductions of withholding tax.

(2) A licensee must make a record of all transactions in connection with activities authorised by a licence as a result of which a person is or might be liable to tax and of the particulars of the person in respect of whom the transaction was made.

(3) A licensee must keep the records under subparagraphs (1) and (2) until the expiry of a period ending at least six years after the end of the calendar year in which the transaction or deduction was made.

(4) A licensee must submit to the Commissioner, a return in such form as the Commissioner may prescribe, for the periods 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December on or before 30 days from the end of each period.

(5) The return under subparagraph (4) must —

(a) specify particulars of the transactions under subparagraphs (1) and (2);

(b) specify particulars of emoluments or other payments paid or payable in respect of duties or services performed in an area in which those activities may be carried on under the licence and the persons to whom they were paid or are payable;

(c) specify the total amount of withholding tax deducted during that period; and

(d) be submitted even if there are no transactions or particulars to report for that period.

(6) A licensee must take all reasonable steps to obtain the information necessary to enable them to comply with subparagraphs (5)(a) and (5)(b).

(7) Withholding tax under subparagraph (1)(a) —

(a) is not corporation tax, but is on account of the liability to corporation tax whether determined or yet to be determined, of the company in respect of which the deduction is made; and

(b) may be applied at any time by the Commissioner in payment or reduction of that company's liability to tax in respect of the accounting period in which the deduction was made or the immediately following period or any earlier period.

(8) A licensee must remit to the Commissioner the amount deducted during the period for which a return is submitted at the same time that the return is submitted under subparagraph (4).

(9) Interest is due on any withholding tax that remains unremitted after the date on which it is payable under subparagraph (8) at the rate of 3 per cent per annum over base lending rate.

(10) The Commissioner may require —

(a) a return under subparagraph (4) to be submitted by transmitting it electronically to an address provided by the Commissioner for the purpose; and

(b) a licensee to submit to the Commissioner the name of a person authorised to send returns electronically.

[S. 13(b)/Ord. 8/21/w.e.f. 1/1/22.]

[S. 3(2)(a)(i) and (ii)/Ord. 7/11/w.e.f. 31/5/11.]

[S. 3(2)(b)/Ord. 7/11/w.e.f. 31/5/11.]

2A Penalties

(1) A licensee who, without reasonable excuse fails to comply with the requirements of subparagraphs 2(2), 2(3) or 2(4), commits an offence and is liable on conviction to a fine not exceeding the maximum of level 7 on the standard scale.

(2) If a licensee fails to submit a return under subparagraph 2(4) with information required under subparagraph 2(5) within the time specified, that licensee is liable to pay —

(a) a penalty of £1,000; and

(b) an additional penalty of £1,000 in respect of each successive period of 15 days that elapse before the information is submitted.

(3) Where a licensee fails to submit a return under subparagraph 2(4) with information required under paragraph 2(5) within the time specified —

(a) for a second time, the penalties under subparagraphs (2)(a) and (2)(b) increase to £2,000; and

(b) for a third and any subsequent times after that, the penalties under subparagraphs (2)(a) and (2)(b) increase to £3,000.

(4) A penalty under subparagraphs (2) and (3) —

(a) is incurred whether or not the licensee is charged with an offence under subparagraph (1); and

(b) attracts the provisions of Schedule 4 and any other provision of this Ordinance about penalties.

[S. 13(c)/Ord. 8/21/w.e.f. 1/1/22.]

2B Exemption from withholding tax

(1) A company may apply to the Commissioner, in such form as the Commissioner may prescribe for an exemption from a deduction of withholding tax under subparagraph 2(1)(a).

(2) To qualify for an exemption under subparagraph (1), the company must have two consecutive accounting periods of good compliance with the requirements under this Ordinance and subsidiary legislation made under it and under the Medical Services Tax Ordinance 2010 and subsidiary legislation made under it.

(3) The Commissioner assesses good compliance by considering the company's record of filing returns, accuracy of those returns and payment of tax by due date.

(4) The Commissioner must maintain an up to date list of the companies that have been granted an exemption under this paragraph showing the effective date of the exemption and the list must be available from the Falkland Islands Government Taxation Office or their website.

(5) An exemption becomes effective on the date that the Commissioner adds a company to the list under subparagraph (4) and an exemption is lost with effect from the date on which a company is removed under subparagraph (6), from the list.

(6) A company loses an exemption under this paragraph on the first instance that it fails without reasonable excuse to comply with a requirement under this Ordinance and subsidiary legislation made under it and under the Medical Services Tax Ordinance 2010 and subsidiary legislation made under it, and it must be removed from the list maintained under subparagraph (4).

(7) Withholding tax may not be deducted from a company for payment for goods or services that are wholly provided or wholly performed outside the Falkland Islands and any designated area.

(8) Where the goods or services were partially provided or partially performed in the Falkland Islands or in any designated area, the licensee must deduct withholding tax on a proportionate amount of the payment by making a fair and reasonable apportionment.

[S. 13(c)/Ord. 8/21/w.e.f. 1/1/22.]

2C Withholding tax certificate, refund, currency, etc

(1) A licensee must issue a withholding tax certificate in such form as the Commissioner may prescribe, to the company from which withholding tax is deducted under paragraph 2(1)(a) with the following information —

(a) amount and date withheld; and

(b) exchange rate used if the invoice is not denominated in sterling.

(2) If an invoice is denominated in currency other than sterling, the licensee must translate the invoice on the due date into sterling by using the Bank of England daily spot rate.

(3) If the withholding tax deducted under paragraph 2(1)(a) exceeds the company's tax liability or if it is deducted from a company which is not liable for tax in the Falkland Islands, that company may claim a refund on such form as the Commissioner may prescribe.

(4) No interest accrues to the amount to be refunded under subparagraph (3).

(5) If a company entitled to a refund under subparagraph (3) has any amount remaining unpaid under this Ordinance or subsidiary legislation made under it or under the Medical Services Tax Ordinance 2010 or subsidiary legislation made under it and that amount has become due, the Commissioner may set off the refund against that unpaid amount that has become due.

[S. 13(c)/Ord. 8/21/w.e.f. 1/1/22.]

3 Recovery of unpaid tax from licensees

(1) Subject to the following provisions of this Schedule, the Commissioner may serve a notice under this paragraph on a licensee requiring the licensee to pay an amount of tax which has been assessed on a person in respect of -

[S. 13(d)(i)/Ord. 8/21/w.e.f. 1/1/22.]

(a) profits or gains from activities authorised, or carried on in connection with activities authorised, by the licence; or

(b) profits or gains from, or chargeable gains accruing on the disposal of, exploration or exploitation rights,

if the tax remains unpaid later than thirty days after it has become due and payable.

(2) An amount of unpaid tax may not be included in a notice under this paragraph if the tax was assessed in respect of the emoluments of any employment.

[S. 13(d)(ii)/Ord. 8/21/w.e.f. 1/1/22.]

(3) The licensee shall pay the amount of unpaid tax stated in the notice, together with any interest due thereon under this Ordinance, within thirty days of the service of the notice.

(4) A notice under this paragraph shall state particulars of the assessment, the amount remaining unpaid, the date when it became payable and the amount of interest due, and where sub-paragraph (2) above or paragraph 4 below applies the notice shall include particulars of the manner in which the amount required to be paid was determined.

(5) Any amount which a licensee is required to pay by a notice under this paragraph may be recovered from him as if it were tax due and duly demanded from him; and he may recover any such amount paid by him from the person on whom the assessment was made.

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

(7) Where more than one licensee may be given a notice under this paragraph in respect of the same amount of unpaid tax, the liability of the licensees to pay the amount specified in the notice shall be joint and several.

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Where tax is assessed on any person as mentioned in paragraph 3(1)(a) or (b) but more than one licence is the basis for the assessment, then the amount the licensee may be required to pay by a notice under that paragraph shall be such amount of the tax remaining unpaid under the assessment as on a just and reasonable apportionment can be attributed to the profits or gains in respect of which the licence was the basis for the assessment, together with a corresponding proportion of any interest due as mentioned in paragraph 3.

[S. 13(e)/Ord. 8/21/w.e.f. 1/1/22.]

5 . . .

[S. 9/Ord. 6/15/w.e.f. 1/10/15.]

6 Recovery of unpaid deductions

(1) The Commissioner may serve a notice under this paragraph on a licensee requiring the licensee to pay an amount that-

(a) should have been paid in accordance with POAT regulations by an employer identified by the licensee in information supplied in accordance with paragraph 2, and

(b) remains unpaid thirty days after it became due and payable by the employer.

(2) The licensee must pay the amount stated in the notice, together with any interest that has become due under POAT regulations, within thirty days of the service of the notice.

(3) A notice under this paragraph must state particulars of the liability under POAT regulations payment of which is sought under this paragraph.

(4) Any amount which a licensee is required to pay by a notice under this paragraph may be recovered from him as if it were tax due and duly demanded from him; and he may recover any such amount paid by him from the person who was liable to make the payment under POAT regulations.

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

(6) Where more than one licensee may be given a notice under this paragraph in respect of the same employer, the liability of the licensees to pay the amount specified in the notice shall be joint and several.

(7) For the avoidance of doubt, a reference in this paragraph to liability under the POAT regulations is a reference to liability under regulations under section 91 of this Ordinance and includes, in particular-

(a) a reference to liability arising as a result of a determination made under those regulations; and

(b) a reference to liability to make payments in respect of Medical Services Tax under the POAT regulations as extended by sections 23 and 24 of the Medical Services Tax Ordinance 2010 (No 13 of 2010).

[S. 13(f)/Ord. 8/21/w.e.f. 1/1/22.]

(8) Fair and reasonable apportionments may be made for the purposes of this paragraph.

[S. 3(3)/Ord. 7/11/w.e.f. 31/5/11.]

7 . . .

[S. 9/Ord. 6/15/w.e.f. 1/10/15.]

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[i] Section 15 was previously amended by s. 3(1) and (2) of the Taxes (Amendment) Ordinance No. 6 of 2006. Section 23 of the Taxes (Amendment) Ordinance No. 2 of 2011 provides as follows (with effect from 1 March 2006):
"Section 3 of the Taxes (Amendment) Ordinance 2006 (No. 6 of 2006) is deemed never to have come into force."
Section 15 has accordingly been amended by s. 24 of the Taxes (Amendment) Ordinance No. 2 of 2011 (**with effect from 1 March 2006 to 31 December 2010**) to provide for the interim period from 1 March 2006 to 31 December 2010. Section 24(2) of the Taxes (Amendment) Ordinance No. 2 of 2011 therefore provides as follows (with effect from 1 March 2006 to 31 December 2010):
"(2) In subsection (3), paragraph (d) is omitted and the following substituted-

'(d) contributions under the Retirement Pensions Ordinance (No. 20 of 1996) which are-

(i) made by the individual on the individual's own behalf; and

(ii) deductible under section 16 of the Retirement Pensions Ordinance.' "

Subscribers are advised to note that this is **an interim measure only**, which has no force of law after 31 December 2010.

[ii] **Note:** Section 57A of this Ordinance provides for deductions from income for tax purposes of donations of £50 or more made to registered charities in any calendar year. Written evidence from the charity of the total amount of donations made to the charity in the calendar year must be provided to the Commissioner of Taxes. Approved charities are:

(a) bodies which are registered as a charity under the Charities Act 1960 as it applies to the Falkland Islands; and

(b) any body of persons or trust which appears on the approved list of charities. The bodies "on the approved list" are charities established overseas which are not registered under the Charities Act 1960 in the Falkland Islands. They have been approved for tax deduction purposes.**]**