



# Capital Gains Tax Act 1979 (repealed 6.3.1992)

## 1979 CHAPTER 14

### PART II

#### GAINS AND LOSSES

##### *Computation of gains*

#### **30** **Introductory.**

The following provisions of this Chapter, and Schedule 5 to this Act, shall have effect for computing for the purposes of this Act the amount of a gain accruing on the disposal of an asset.

#### **31** **Consideration chargeable to tax on income.**

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation under this Chapter of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of the Income Tax Acts.
- (2) Subsection (1) above shall not be taken as excluding from the consideration so taken into account any money or money's worth which is taken into account in the making of a balancing charge under the <sup>M1</sup>Capital Allowances Act [<sup>F1</sup>1990, including the provisions of the Taxes Act 1988 which are to be treated as contained in the 1990 Act but excluding Part III of the 1990 Act, or which is brought into account as the disposal value of machinery or plant under section 24 of the 1990 Act.]
- (3) This section shall not preclude the taking into account in a computation under this Chapter, as consideration for the disposal of an asset, of the capitalised value of a rentcharge (as in a case where a rentcharge is exchanged for some other asset) or of the capitalised value of a ground annual or feu duty, or of a right of any other description to

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income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

[<sup>F2</sup>(4) The reference in subsection (1) above to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of subsection (2) of section 76 of the Taxes Act 1988.]

#### Textual Amendments

**F1** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\), s. 164\(1\)\(3\), Sch. 1 para. 3\(2\)](#)

**F2** [S. 31\(4\)](#) added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), Sch. 29 para. 17](#)

#### Modifications etc. (not altering text)

**C1** See— [Finance Act 1984 \(c. 43, SIF 63:2\), s. 36\(1\)](#) and Sch. 9 para. 1(1); [Finance Act 1985 \(c. 54\), s. 77](#) and Sch. 23 paras. 15(7), 33; [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 763\(2\)](#) and Sch. 28 para. 3(4); [Finance Act 1988 \(c. 39, SIF 63:1, 2\), s. 63](#)

**C2** See though [Finance Act 1978 \(c. 42\), s. 61\(3\)\(a\)](#)

**C3** [S. 31\(1\)](#) excluded (E.W.S) (16.1.1992) by S.I. 1992/58, art. 9, [Sch. 2 para.3](#)

**C4** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 777\(12\)](#)

#### Marginal Citations

**M1** [1990 c. 1.](#)

## 32 Expenditure: general.

- (1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to—
- (a) the amount or value of the consideration, in money or money's worth, given by 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) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by 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.
- (2) For the purposes of this section and for the purposes of all other provisions of this Act 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 (including stamp duty) together—
- (a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and
  - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter, including in particular

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expenses reasonably incurred in ascertaining market value where required by this Act.

- (3) Except as provided by section 269 of [<sup>F3</sup>the Taxes Act 1970] (companies: interest charged to capital), no payment of interest shall be allowable under this section.
- (4) Any provision in this Act introducing the assumption that assets are sold and immediately re-acquired shall not imply that any expenditure is incurred as incidental to the sale or re-acquisition.

[<sup>F4</sup>(5) Where—

- (a) a person acquires an asset for no consideration in money or money's worth or for a consideration of an amount or value lower than the market value of the asset, and is not treated under any provision of this Act as acquiring it for a consideration other than the actual consideration, and
- (b) there is a corresponding disposal of the asset by a person who is neither resident nor ordinarily resident in the United Kingdom, and
- (c) a charge to income tax, corporation tax or capital gains tax arises in respect of the acquisition,

the sums allowable under this section as a deduction in the computation made on the first-mentioned person's disposal of the asset shall include a sum equal to the amount in respect of which the charge arises.

- (6) The condition in paragraph (c) of subsection (5) above shall be taken to be satisfied where under section 80(3) of the Finance Act 1981 chargeable gains are treated as accruing to a person in any year by reason of his acquisition of an asset in that or an earlier year; and the reference in subsection (5) above to the amount in respect of which the charge arises shall be taken to be a reference to the amount of the gains treated as accruing to him.]

#### Textual Amendments

- F3** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29 para. 15](#)
- F4** [S. 32\(5\)\(6\)](#) inserted by [Finance Act 1981 \(c. 35, SIF 63:2\)](#), [s. 90\(2\)](#) in relation to acquisitions and disposals on or after 10 March 1981 and repealed by [Finance Act 1984 \(c. 43, SIF 63:2\)](#), [ss. 66\(3\), 128\(6\)](#) and Sch. 23 Pt. VIII where the disposal by the person who is neither resident nor ordinarily resident in the U.K. is made on or after 6 April 1985

#### Modifications etc. (not altering text)

- C5** See— [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 185\(7\)](#); [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [s. 84](#)
- C6** [S. 32\(1\)\(a\)](#) modified (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, [Sch. 2 para. 4\(1\)\(2\)](#)  
[S. 32\(1\)\(b\)](#) modified (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, [Sch. 2 para. 5\(1\)](#).
- C7** See— [Capital Gains Tax Act 1979 \(c. 14\)](#), [s. 132A](#); [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [s. 63](#); [Finance Act 1989 \(c. 26, SIF 63:2\)](#), [ss. 68–70](#)
- C8** [S. 32\(1\)\(b\)\(c\)](#) applied (with modifications) (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, [Sch. 2 para. 5\(2\)](#)
- C9** See— [Finance \(No. 2\) Act 1975 \(c. 45\)](#), [s. 58\(8\)](#); [Development Land Tax Act 1976 \(c. 24\)](#), [s. 34\(2\)](#) (which Act was repealed by [Finance Act 1985 \(c. 54, SIF 63:2\)](#), [ss. 93, 98\(6\)](#) and Sch. 27 Pt. X)

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**[<sup>F5</sup>32A Expenditure: amounts to be included as consideration.**

- (1) Section 32(1)(a) above applies as if the relevant amount as defined in the following provisions of this section in the cases there specified had formed part of the consideration given by the person making the disposal for his acquisition of the assets in question.
- (2) Where an amount is chargeable to tax by virtue of section 162(5) of the Taxes Act 1988 in respect of shares or an interest in shares, then—
  - (a) on a disposal of the shares or interest, where that is the event giving rise to the charge; or
  - (b) in any case, on the first disposal of the shares or interest after the event, the relevant amount is a sum equal to the amount so chargeable.
- (3) If a gain chargeable to tax under section 135(1) or (6) of the Taxes Act 1988 is realised by the exercise of a right to acquire shares, the relevant amount is a sum equal to the amount of the gain so chargeable to tax.
- (4) Where an amount is chargeable to tax under section 138 of the Taxes Act 1988 on a person acquiring any shares or interest in shares, then on the first disposal (whether by him or another person) of the shares after his acquisition, the relevant amount is an amount equal to the amount so chargeable.
- (5) Where an amount was chargeable to tax under section 185(6) of the Taxes Act 1988 in respect of shares acquired in exercise of any such right as is mentioned in section 185(1) of that Act, the relevant sum in relation to those shares is an amount equal to the amount so chargeable.
- (6) Subsections (2), (3), (4) and (5) above shall be construed as one with sections 162, 135, 138 and 185 of the Taxes Act 1988 respectively.]

**Textual Amendments**

**F5** S. 32A added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29 para. 18](#)

**33 Exclusion of expenditure by reference to tax on income.**

- (1) There shall be excluded from the sums allowable under section 32 above as a deduction in the computation under this Chapter any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains; and this subsection applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.
- (2) Without prejudice to the provisions of subsection (1) above there shall be excluded from the sums allowable under section 32 above as a deduction in the computation under this Chapter 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

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as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

[<sup>F6</sup>(3) No account shall be taken of any relief under Chapter II of Part IV of the Finance Act 1981 or under Schedule 5 to the Finance Act 1983, in so far as it is not withdrawn and relates to shares issued before 19th March 1986, in determining whether any sums are excluded by virtue of subsection (1) or (2) above from the sums allowable as a deduction in the computation of gains or losses for the purposes of this Act.]

#### Textual Amendments

**F6** S. 33(3) added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29 para. 19](#)

#### Modifications etc. (not altering text)

**C10** S. 33(1)(2) excluded (E.W.S.) (16.1.1992) by [S.I. 1992/58, art. 9, Sch. 2 para. 6](#)

**C11** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 777\(12\)](#)

- [<sup>F7</sup>**33A**
- (1) Where there is a transfer of securities within the meaning of section 710 of the Taxes Act 1988 (accrued income scheme)—
    - (a) if section 713(2)(a) or (3)(a) of that Act applies, section 31 above shall be disregarded in computing for capital gains tax purposes the gain accruing on the disposal concerned;
    - (b) if section 713(2)(b) or (3)(b) of that Act applies, section 33 above shall be disregarded in computing for capital gains tax purposes the gain accruing to the transferee if he disposes of the securities;but subsections (2) and (3) below shall apply.
  - (2) Where the securities are transferred with accrued interest (within the meaning of section 711 of that Act)—
    - (a) if section 713(2)(a) of that Act applies, an amount equal to the accrued amount (determined under that section) shall be excluded from the consideration mentioned in subsection (8) below;
    - (b) if section 713(2)(b) of that Act applies, an amount equal to that amount shall be excluded from the sums mentioned in subsection (9) below.
  - (3) Where the securities are transferred without accrued interest (within the meaning of section 711 of that Act)—
    - (a) if section 713(3)(a) of that Act applies, an amount equal to the rebate amount (determined under that section) shall be added to the consideration mentioned in subsection (8) below;
    - (b) if section 713(3)(b) of that Act applies, an amount equal to that amount shall be added to the sums mentioned in subsection (9) below.
  - (4) Where section 716 of that Act applies—
    - (a) if subsection (2) or (3) of that section applies, section 31 above shall be disregarded in computing for capital gains tax purposes the gain accruing on the disposal concerned, but the relevant amount shall be excluded from the consideration mentioned in subsection (8) below; and
    - (b) if subsection (4) of that section applies and the securities were transferred as mentioned in subsection (1) of that section after 18th March 1986, section 33

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above shall be disregarded in computing for capital gains tax purposes the gain accruing on the disposal concerned, but the relevant amount shall be excluded from the sums mentioned in subsection (9) below.

- (5) In subsection (4) above “the relevant amount” means an amount equal to—
- (a) if paragraphs (b) and (c) below do not apply, the amount of the unrealised interest in question;
  - (b) if section 719 of the Taxes Act 1988 applies—
    - (i) in a case falling within subsection (4)(a) above, amount A (within the meaning of section 719);
    - (ii) in a case falling within subsection (4)(b) above, amount C (within the meaning of section 719);
  - (c) if the unrealised interest is subject to the provisions of regulations under section 476(1) of that Act and would not on being paid (to whatever person) be a gross payment within the meaning of those regulations, the grossed up equivalent of the unrealised interest (calculated in accordance with section 726 of that Act).

Paragraphs (a), (b) and (c) above shall be construed as one with sections 716, 719 and 726 respectively.

- (6) In relation to any securities which by virtue of subsection (7) below are treated for the purposes of this sub-paragraph as having been transferred, subsections (2) and (3) above shall have effect as if for “applies” (in each place where it occurs) there were substituted “would apply if the disposal were a transfer”.
- (7) Where there is a disposal of securities for capital gains tax purposes which is not a transfer for the purposes of section 710 of the Taxes Act 1988 but, if it were such a transfer, one or more of the following paragraphs would apply, namely, paragraphs (a) and (b) of section 713(2) and paragraphs (a) and (b) of section 713(3) of that Act, the securities shall be treated—
- (a) for the purposes of subsection (6) above, as transferred on the day of the disposal, and
  - (b) for the purposes of subsections (2) and (3) above, as transferred with accrued interest if, had the disposal been a transfer for the purposes of section 710, it would have been a transfer with accrued interest and as transferred without accrued interest if, had the disposal been such a transfer, it would have been a transfer without accrued interest.
- (8) The consideration is the consideration for the disposal of the securities transferred which is taken into account in the computation for capital gains tax purposes of the gain accruing on the disposal.
- (9) The sums are the sums allowable to the transferee as a deduction from the consideration in the computation for capital gains tax purposes of the gain accruing to him if he disposes of the securities.
- (10) Where on a conversion or exchange of securities a person is treated as entitled to a sum under subsection (2)(a) of section 713 of the Taxes Act 1988 an amount equal to the accrued amount (determined under that section) shall, for capital gains tax purposes, be treated as follows—
- (a) to the extent that it does not exceed the amount of any consideration which the person receives (or is deemed to receive) or becomes entitled to receive

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on the conversion or exchange (other than his new holding), it shall be treated as reducing that consideration; and

- (b) to the extent that it does exceed that amount, it shall be treated as consideration which the person gives on the conversion or exchange;

and where on a conversion or exchange of securities a person is treated as entitled to relief under subsection (3)(a) of that section an amount equal to the rebate amount (determined under that section) shall, for capital gains tax purposes, be treated as consideration which the person receives on the conversion or exchange.

- (11) In subsection (10) above “conversion” means conversion within the meaning of section 82 below and “exchange” means an exchange which by virtue of Chapter 11 of Part IV of this Act does not involve a disposal.]

#### Textual Amendments

F7 S. 33A added by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29 para. 20](#)

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

- (1) Section 33 above shall not require the exclusion from the sums allowable as a deduction in the computation under this Chapter of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made, but the amount of any losses accruing on the disposal of an asset shall be restricted by reference to capital allowances and renewals allowances as follows.
- (2) In the computation under this Chapter of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of it.
- (3) If the person making the disposal acquired the asset—
- (a) by a transfer by way of sale in relation to which an election under [F8section 158 of the Capital Allowances Act 1990] was made, or
- (b) by a transfer to which [F8section 78(2)] of that Act applies,
- (being enactments under which a transfer is treated for the purposes of capital allowances as being made at written down value), the preceding provisions of this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except so far as any loss to the transferor was restricted under those provisions) been made to the person making the disposal (that is the transferee); and where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection can be taken into account in relation to the transferor shall also be taken into account in relation to the transferee (that is the person making the disposal), and so on for any series of transfers before the disposal.
- (4) In this section “capital allowance” means—
- (a) any allowance under the Capital Allowances Act [F91990, including the provisions of the Taxes Act 1988 which are to be treated as contained in the 1990 Act], other than an allowance under [F10section 33(1) of the Taxes Act 1988] (relief for cost of maintenance of agricultural land),
- (aa) . . . . .<sup>F11</sup>
- (b) any relief given under section [F1230] of [F13the Taxes Act 1988] (expenditure on sea walls), and



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- (c) any deduction in computing profits or gains allowable under section [F1291] of [F13the Taxes Act 1988] (cemeteries).
- (5) In this section “renewals allowance” means a deduction allowable in computing the profits or gains of a trade, profession or vocation for the purpose of income tax by reference to the cost of acquiring an asset for the purposes of the trade, profession or vocation in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.
- (6) The amount of capital allowances to be taken into account under this section in relation to a disposal include any allowances falling to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event, . . . F14
- (7) Where the disposal is of machinery or plant in relation to expenditure on which allowances or charges have been made under [F15Part II of the Capital Allowances Act 1990 and neither section 79 (assets used only partly for trade purposes) nor section 80 (wear and tear subsidies) of that Act] applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the capital expenditure incurred, or treated as incurred, under [F16that Part] on the provision of the machinery or plant by the person making the disposal and the disposal value required to be brought into account in respect of the machinery or plant.

#### Textual Amendments

- F8** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(1)(3), **Sch. 1 para. 3(3)(a)**
- F9** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(1)(3), **Sch. 1 para. 3(3)(b)**
- F10** Words substituted by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), s. 146 and Sch. 13 para. 16
- F11** S. 34(4)(aa) inserted by [Finance \(No. 2\) Act 1983 \(c. 49\)](#), s. 6(3) and repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), ss. 82, 164(4)(5), **Sch. 2**
- F12** Figure substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32
- F13** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), **Sch. 29 paras. 15** and 32
- F14** Words repealed by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), ss. 82, 164(4)(5), **Sch. 2**
- F15** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(1)(3), **Sch. 1 para. 3(3)(c)(i)**
- F16** Words substituted by [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), s. 164(1)(3), **Sch. 1 para. 3(3)(c)(iii)**

#### Modifications etc. (not altering text)

- C12** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), ss. 62, 63, 96 and Sch. 8 para. 3

## 35 Part disposals.

- (1) Where a person disposes of an interest or right in or over an asset, and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 32(1) above are attributable to the asset shall, both for the purposes of the computation under this chapter of the gain accruing on the disposal and for the purpose of applying this Chapter in relation to the property which remains undisposed of, be apportioned.



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- (2) The apportionment shall be made by reference—
- (a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and
  - (b) to the market value of the property which remains undisposed of on the other hand (call that market value B),
- and accordingly the fraction of the said sums allowable as a deduction in computing under this Chapter the amount of the gain accruing on the disposal shall be

$$\frac{A}{A+B}$$

and the remainder shall be attributed to the property which remains undisposed of.

- (3) Any apportionment to be made in pursuance of this section shall be made before operating the provisions of section 34 above and if, after a part disposal, there is a subsequent disposal of an asset the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4) below, be those referable to the sums which under paragraphs (a) and (b) of section 32(1) above are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 34 above.
- (4) This section 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.
- (5) It is hereby declared that this section, 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—
- (a) section 44(1) below (disposals between husband and wife),
  - (b) sections 115 to 121 below (replacement of business assets), but without prejudice to the provisions of subsection (8) of the said section 115,
  - (c) section 273(1) of [<sup>F17</sup>the Taxes Act 1970] (transfers within a group of companies), or
  - (d) any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

#### Textual Amendments

**F17** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [Sch. 29 para. 15](#)

#### Modifications etc. (not altering text)

**C13** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [ss. 63, 96](#) and Sch. 8 para. 3

**C14** See— [Finance Act 1982 \(c. 39, SIF 63:2\)](#), [s. 86](#) and Sch. 13 Part I para. 1; [Finance Act 1985 \(c. 54\)](#), [s. 68\(3\)\(b\)](#) and Sch. 19 para. 10

**C15** See [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), [s. 96](#) and Sch. 8 para. 4

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### 36 Assets derived from other assets.

If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in a computation under this Chapter in respect of the other asset under paragraphs (a) and (b) of section 32(1) above shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

#### Modifications etc. (not altering text)

**C16** See— Finance Act 1985 (c. 54), s. 68(6); Finance Act 1988 (c. 39, SIF 63;1, 2), ss. 96, 97, Schs. 8 para. 5 and 9 para. 3(2)

### 37 Wasting assets.

- (1) In this Chapter “wasting asset” means an asset with a predictable life not exceeding fifty years but so that—
  - (a) freehold land shall not be a wasting asset whatever its nature, and whatever the nature of the buildings or works on it,
  - (b) “life”, in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal,
  - (c) plant and machinery shall in every case be regarded as having a predictable life of less than fifty years, and in estimating that life it shall be assumed that its life will end when it is finally put out of use as being unfit for further use, and that it is going to be used in the normal manner and to the normal extent and is going to be so used throughout its life as so estimated,
  - (d) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is fifty years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Board.
- (2) In this Chapter “the residual or scrap value”, in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section.
- (3) The question what is the predictable life of an asset, and the question what is its predictable residual or scrap value at the end of that life, if any, shall, so far as those questions are not immediately answered by the nature of the asset, be taken, in relation to any disposal of the asset, as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

### 38 Wasting assets: straightline restriction of allowable expenditure.

- (1) In the computation under this Chapter of the gain accruing on the disposal of a wasting asset it shall be assumed—
  - (a) that any expenditure attributable to the asset under section 32(1)(a) above after deducting the residual or scrap value, if any, of the asset, is written off at a

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uniform rate from its full amount at the time when the asset is acquired or provided to nothing at the end of its life, and

- (b) that any expenditure attributable to the asset under section 32(1)(b) above is written off from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nothing at the end of its life,

so that an equal daily amount is written off day by day.

- (2) Thus, calling the predictable life of a wasting asset at the time when it was acquired or provided by the person making the disposal L, the period from that time to the time of disposal T(1), and, in relation to any expenditure attributable to the asset under section 32(1)(b) above, the period from the time when that expenditure is first reflected in the state or nature of the asset to the said time of disposal T(2), there shall be excluded from the computation under this Chapter—

- (a) out of the expenditure attributable to the asset under section section 32(1)(a) above a fraction

$$\frac{T(2)}{L - (T(1) - T(2))}$$

of an amount equal to the amount of that expenditure minus the residual or scrap value, if any, of the asset, and

- (b) out of the expenditure attributable to the asset under section section 32(1)(b) above a fraction

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

of the amount of the expenditure.

- (3) If any expenditure attributable to the asset under section 32(1)(b) above creates or increases a residual or scrap value of the asset, the provisions of subsection (1)(a) above shall be applied so as to take that into account.

### **39 Wasting assets qualifying for capital allowances.**

- (1) Section 38 above shall not apply in relation to a disposal of an asset—
  - (a) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used and used solely for the purposes of a trade, profession or vocation and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or paragraph (b) of section 32(1) above, or
  - (b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

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- (2) In the case of the disposal of an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—
- (a) the consideration for the disposal, and any expenditure attributable to the asset by paragraph (a) or paragraph (b) of section 32(1) above shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and
  - (b) the computation under this Chapter shall be made separately in relation to the apportioned parts of the expenditure and consideration, and
  - (c) section 38 above shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances, and
  - (d) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on him, that apportionment shall be employed for the purposes of this section, and
  - (e) subject to paragraph (d) above, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a) above.

**Modifications etc. (not altering text)**

**C17** See Finance Act 1988 (c. 39, SIF 63;1, 2), s. 96 and Sch. 8 para. 3

**40 Consideration due after time of disposal.**

- (1) If the consideration, or part of the consideration, taken into account in the computation under this Chapter is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding eighteen months, then, if the person making the disposal satisfies the Board that he would otherwise suffer undue hardship, the tax on a chargeable gain accruing on the disposal may, at his option, be paid by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the first-mentioned instalments is payable.
- (2) In the computation under this Chapter 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 inspector to be irrecoverable, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

**Modifications etc. (not altering text)**

**C18** S. 40(2) applied (with modifications) (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, Sch. 2 para. 7

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#### **41 Contingent liabilities.**

- (1) In the first instance no allowance shall be made in the computation under this Chapter—
  - (a) in the case of a disposal by way of assigning a lease of land or other property, for any liability remaining with, or assumed by, the person making the disposal by way of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease,
  - (b) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed as vendor of land, or of any estate or interest in land, or as a lessor,
  - (c) for any contingent liability in respect of a warranty or representation made on a disposal by way of sale or lease of any property other than land.
- (2) If it is subsequently shown to the satisfaction of the inspector that any such contingent liability has become enforceable, and is being or has been enforced, such adjustment, whether by way of discharge or repayment of tax or otherwise, shall be made as is required in consequence.

**Modifications etc. (not altering text)**

**C19** [S. 41\(2\)](#) applied (with modifications) (E.W.S.) (16.1.1992) by [S.I. 1992/58, art. 9, Sch. 2 para.7](#)

#### **42 Expenditure reimbursed out of public money.**

There shall be excluded from the computation under this Chapter any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government, public or local authority whether in the United Kingdom or elsewhere.

**Modifications etc. (not altering text)**

**C20** [See Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\), s. 400\(6\)](#)

#### **43 Supplemental.**

- (1) No deduction shall be allowable in a computation under this Chapter more than once from any sum or from more than one sum.
- (2) 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 income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.
- (3) In this Chapter references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.
- (4) For the purposes of any computation under this Chapter any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Chapter, be such

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method as appears to the inspector or on appeal the Commissioners concerned to be just and reasonable.

- (5) In this Chapter “capital allowance” and “renewals allowance” have the meanings given by subsections (4) and (5) of section 34 above.

**Modifications etc. (not altering text)**

**C21** S. 43(4) applied (with modifications) (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 9, Sch. 2 para. 8(1)

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